



\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 628/2021**

DR RENU PURI

.....Plaintiff

Through: Ms. Samvartika Pathak, Ms. Swati
Bansal and Ms. Mansi Jain, Advs.

versus

SMT ANU MAHAJAN

.....Defendant

Through: Mr. Tushar Rohmetra, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

%

24.09.2024

I.A. 40351/2024 (seeking condonation of delay under Section 5 of Limitation Act in filing the present O.A. Chamber Appeal against the order dated 07.08.2024 passed by the learned Joint Registrar)

1. By way of present application, the plaintiff/appellant seeking condonation of delay in filing the O.A. against the order dated 07.08.2024.
2. The application is not opposed by the learned counsel for the defendant. Accordingly, the application is allowed and delay in filing the O.A. is condoned.
3. The application stands disposed of.

O.A. 163/2024 (Appeal under Chapter II Rule 5 of DHC(Original Side) Rules 2018 read with Section 151 CPC against the impugned order dated 07.08.2024 passed by learned Joint Registrar)

4. The present appeal has been filed by the plaintiff under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 read with Section 151 CPC against the impugned order dated 07.08.2024 passed by the learned Joint Registrar.
5. The learned counsel for the plaintiff submits that the plaintiff is



aggrieved by the imposition of cost of Rs.5,000/-, as well as, remarks made against the plaintiff to the effect that “*the plaintiff by changing the index sent in advance service has played fraud upon the Court and the defendant*”.

6. The learned counsel submits that the reason behind the imposition of cost and passing of such remarks was that a copy of the I.A. 8307/2024 was sent by the plaintiff to the defendant. However, the learned counsel for the defendant under the wrong impression that the application has been sent under the cover of incorrect index pointed out the same to the learned Joint Registrar.

7. She submits that the index which was brought to the notice of learned Joint Registrar was, in fact, the index of I.A. 6011/2024 which had been filed by the plaintiff under Section 151 CPC seeking clarification, therefore, there was a mismatch between the index of I.A. 8307/2024 and the one shown by the learned counsel for the defendant to the learned Joint Registrar.

8. The learned counsel for the defendant does not dispute the aforesaid position.

9. In view of the above, the appeal is allowed and the cost of Rs. 5000/- imposed on the plaintiff is waived off and the remarks that “*the plaintiff by changing the index sent in advance service has played fraud upon the Court and the defendant*” are expunged from the order dated 07.08.2024 of the learned Joint Registrar.

10. The appeal stands disposed of.

CS(OS) 628/2021 & I.A. 7034/2024 (under Section 2(2) read with Section 151 CPC for passing of preliminary and final decree *qua* movable properties in question in present partition suit by defendant)



11. The present suit has been filed by the plaintiff seeking partition of movable, as well as, immovable assets left behind their parents namely Late Ramesh Chander Malhotra (father) and Late Janak Malhotra (mother). The plaintiff, as well as, the defendant are siblings.

12. It is the case of the plaintiff that the parents of the parties died intestate and therefore, the plaintiff, as well as, the defendant, who are the only two legal heirs of their parents are entitled to the share in the suit properties to the extent of 50% each. However, the position with regard to all suit properties being part of the estate left behind by the parents of the parties is disputed by the defendant/applicant.

13. In so far as the movable assets which have been enumerated in Schedule-I to the present application, there is no dispute that the same forms part of the estate of the parents, therefore, the plaintiff, as well as, the defendants are entitled to the same to the extent of 50% share each.

14. The learned counsel for the parties also affirm the aforesaid position and prays for passing a preliminary decree with regard to the movable assets mentioned in Schedule I to the present application. However, the learned counsel for the plaintiff submits that the consent for the preliminary decree is being given by the plaintiff without prejudice to the rights and contentions of the plaintiff with regard to other assets not mentioned in the Schedule I.

15. In view of the above, there is no need to put the issue of partition to trial and record evidence with regard to the moveable assets mentioned in Schedule I. Accordingly, a preliminary decree is passed in respect of the movable assets mentioned in Schedule I to the present application, which shall form part of the preliminary decree.

16. List before the learned Joint Registrar for admission/denial of



documents, as well as, marking of exhibits on 03.12.2024.

17. List before Court on 20.01.2025.

I.A. 39458/2024 (under Order XXXIX Rule 4 CPC read with Section 151 CPC seeking vacation of stay of order dated 30.11.2024 by defendant)

18. Issue notice. The learned counsel named above accepts notice on behalf of the non-applicant.

19. Let reply to the application be filed within a period of three weeks. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

20. List before the learned Joint Registrar for completion of pleadings on 03.12.2024.

21. List before Court on 20.01.2025.

VIKAS MAHAJAN, J

SEPTEMBER 24, 2024/dss