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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 752/2022**
MINU SUBBA

..... Plaintiff

Through: Mr.Kirti Uppal, Sr. Adv. with
Mr.Arjun Malik, Ms.Aarohi Malik &
Mr.Harsh Kumar, Advs.

versus

JYOTI SUBBA & ORS.

..... Defendants

Through: Mr.Kunal Sabharwal, Mr.Mehendra
Pratap, Mr.Raghav Mittal &
Mr.Deepak Mahajan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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02.12.2022

I.A. 20270/2022 (Exemption)

1. Allowed, subject to all just exceptions.

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2. Let the Complaint be registered as a suit.

3. Issue summons to the defendants.

4. Summons are accepted on behalf of the defendant nos. 1 to 3 by
Mr.Kunal Sabharwal, Advocate.

5. Let summons be served on the remaining defendants through all
permitted modes, including electronically, returnable on 21st February, 2023
before the learned Joint Registrar (Judicial).

6. The summons to the defendants shall indicate that the written
statement(s) to the Complaint shall be positively filed within the statutory period
from the date of receipt of summons. Along with the written statement(s),



the defendants shall also file the affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

7. Liberty is given to the plaintiff to file the replication within the statutory period of the receipt of the written statement(s). Along with the replication, if any, filed by the plaintiff, the affidavit of admission/denial of documents of the defendants be filed by the plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

I.A. 20269/2022

8. Issue Notice.

9. Notice is accepted by Mr.Kunal Sabharwal, the learned counsel, on behalf of the defendant nos.1 to 3.

10. Let notice on the remaining defendants be served through all permissible modes, including electronically, returnable on 21st February, 2023, before the learned Joint Registrar (Judicial).

11. Let a reply(ies) to the applications be filed by the defendants within a period of four weeks of receipt of the notice. Rejoinder thereto, if any, be filed within a period of four weeks thereafter.

12. It is the case of the plaintiff that the plaintiff is the daughter of late Shri Moni Kumar Subba and Smt. Jyoti Subba- Defendant no. 1. Shri Moni Kumar Subba and Smt. Jyoti Subba got married while Shri Moni Kumar Subba was already married to one Smt. Tilmaya Subba. The defendant nos. 2 and 3 are the other children from Smt. Jyoti Subba, while the defendant nos.4 and 5 are the children of late Shri Moni Kumar Subba from his earlier



legally wedded wife Smt. Tilmaya Subba.

13. It is further the case of the plaintiff that late Shri Moni Kumar Subba died intestate on 27.05.2019, leaving behind the properties mentioned in paragraph 6 of the Plaint. *Inter se* disputes have thereafter arisen between the parties to his succession.

14. On the other hand, the learned counsel for the defendant nos.1 to 3, who appears on advance notice, denies any relationship with the plaintiff. He further submits that late Shri Moni Kumar Subba belonged to a Scheduled Tribe and, therefore, the Hindu Succession Act, 1956, would not apply to his succession. He further submits that Shri Moni Kumar Subba has also left behind a registered Will dated 29.10.2015.

15. He further submits that as far as some of the properties mentioned in paragraph 6 of the Plaint are concerned, they do not belong to Late Shri Moni Kumar Subba. Specifically referring to the property mentioned in paragraph 6(iv) of the plaint, that is, 50% undivided right, title, ownership and interest in Khasra No. 624 & 626, Jai Mata Di Farm House, Village-Sultanpur, Chhatarpur, Mehrauli-Gurgaon Road, New Delhi, he submits that the same belongs to the defendant nos.1 and 2, and they have already entered into an oral Agreement to Sell with a third party, which itself has fallen in dispute and certain litigations are pending *qua* the said property.

16. I have considered the submissions made by the learned counsels for the parties. While the defendants file their response to the Plaint and the application, considering the contents of the Plaint, I am of the opinion that the plaintiff has been able to make out a *prima facie* case for grant of an order of an *ad interim* injunction. The submissions of the learned counsel for the defendant no. 1 to 3 can be considered only when a response is filed by



the said defendants, stating the above facts on affidavit. For the present, status quo needs to be maintained by the parties to the Suit for preserving the subject matter of the Suit.

17. Accordingly, the defendants, by way of an order of *ad interim* injunction, are restrained from creating any third party interest or parting with the possession of the properties mentioned in paragraph 6 of the Plaint. Needless to state, the present order operates only *inter se* between the parties and persons claiming under them.

18. As far as the property mentioned in paragraph 6(iv) of the Plaint is concerned, in case, the defendant nos.1 and 2 are to deal with the same, they shall seek prior permission of this Court.

19. Compliance with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, be made within a period of one week from today.

NAVIN CHAWLA, J

DECEMBER 2, 2022/rv