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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 726/2014**

GYAN PRAKASH GUPTA Plaintiff

Through: Mr. Pawan Sharma, Advocate.

versus

VIJAY PRAKASH & ORS Defendants

Through: Mr. M. Tarique Siddiqui, Advocate
for LR's of D-1.

Ms. Rashmi Jain and Ms. Archana
Gupta, Advocates for D-4 to D-13.

Mr. Shashank Khurana, Advocate for
D-18.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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05.07.2018

I.A. 2679/2018

1. Allowed, subject to all just exceptions. Application is disposed of.

I.A. 2678/2018

2. This is an application for condonation of delay of 20 days in filing of the present appeal. Delay is condoned. Application is disposed of.

I.A. 4641/2014 (under Order XXXIX Rules 1 & 2 CPC)

3. The order dated 25th July, 2014, directing that the parties shall maintain status quo in respect of possession, title of the suit property bearing No. A-35, Kailash Colony, New Delhi-110048 (*hereinafter, 'suit property'*) is made absolute during the pendency of the present suit.

4. Application is disposed of.

O.A. 23/2018

5. It appears that on 26th February, 2018 only the exemption application was disposed of. The OA is still pending.



6. This is an appeal filed against the order dated 5th December, 2017. By the said order, the learned Joint Registrar has allowed the application under Order I Rule 10 filed by M/s Saboori Developers & Promoters Pvt. Ltd. who allegedly purchased the share of Defendant No.1 in the said property. The Joint Registrar has considered the rival contentions and has held that even if the property has been sold by Defendant no.1 - Mr. Vijay Prakash in breach of an earlier injunction order which was operating in the suit for injunction filed by him, the effect of the same would not be an impediment for impleadment of M/s Saboori Developers & Promoters Pvt. Ltd.

7. The Joint Registrar has not, in any manner, determined that the sale transaction was valid and legal and has also not determined the extent of share owned by the proposed Defendant - M/s Saboori Developers & Promoters Pvt. Ltd. The impugned order merely holds that the proposed Defendants having purchased the share of Mr. Vijay Prakash, who admittedly is a co-sharer in the property. The presence of M/s Saboori Developers & Promoters Pvt. Ltd. is, thus necessary for effective and complete adjudication of the suit.

8. This Court has heard the submissions of the parties in the appeal. The submission of the Plaintiff/Appellant is that the Will and the purported family settlement entered into between Mr. Maghanand - the father of Plaintiff and Mr. Vijay Prakash - brother of the Plaintiff, are completely illegal as they are not registered in accordance with law. It is further argued that Mr. Maghanand had eight children and he was the owner of 50% of the property, which as per his Will, was to be divided equally amongst his 5 sons. Thus, Defendant No.1 could not have sold the suit property without the consent of the other co-sharers. Any claim of M/s Saboori Developers &



Promoters Pvt. Ltd. to the property, which was purchased by it without the consent of other co-sharers, would have to be adjudicated at the final stage. At this stage, so long as M/s. Saboori Developers & Promoters Pvt. Ltd claims to have purchased the share of Defendant no.1 - Vijay Prakash, who was a co-sharer in the suit property, it cannot be said that the said Company cannot be impleaded in the present suit, which seeks Partition of the same very property.

9. At this stage M/s Saboori Developers & Promoters Pvt. Ltd. deserves to be impleaded in the matter. Thus, leaving all the contentions of the parties open, the order of the Joint Registrar to the extent that it impleads M/s Saboori Developers & Promoters Pvt. Ltd. as Defendant No.20 in the suit is upheld. Needless to say, neither the order of the Joint Registrar, nor today's order will be construed as an opinion of the Court on the merits of the case.

10. Appeal is disposed of with these observations.

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11. All the original documents which are required to be produced shall be produced on the next date of hearing when the admission/denial or exhibit marking shall take place. No further opportunity shall be granted to the parties in this respect.

12. List before Joint Registrar for marking of exhibits on 31st July, 2018 and before Court for framing of issues on 14th August, 2018.

PRATHIBA M. SINGH, J.

JULY 05, 2018

Rekha