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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 3735/2024
FARZANA BEGUM & ORS.Petitioners

Through: Ms. Upasana Pahuja with Ms. Mehak Chaudhary, Advocates.

versus

GULZAR & ORS.Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

% **ORDER**
28.10.2024

CM APPL. 63675/2024 (exemption)

Exemption allowed subject to all just exceptions.

CM(M) 3735/2024 & CM APPL. 63674/2024 (stay)

1. Petitioners are defendant Nos.1 to 6 before the learned Trial Court and are defending a suit for partition.
2. Para 3 and 4 of such suit read as under:-

"3. That as such Mr. Mohd Ahmed has expired on 17.04.2008 in Delhi leaving behind two wives, three sons and three daughters. Accordingly, details of all the legal heirs and representative of Mr. Mohd Ahmed are given hereunder:

SL. No.	Names	Relationship with the deceased	Plaintiff/ Defendant
1.	Mst. Gulzar	First Wife	Plaintiff No. 1
2.	Mst. Farzana Begum	Second Wife	Defendant No.1
3.	Mrs. Ghazala	Daughter	Plaintiff No. 2
4.	Mr. Nabi	Son	Defendant No.2



	<i>Ahmed</i>		
5.	<i>Mr. Noor Ahmed</i>	<i>Son</i>	<i>Defendant No.3</i>
6.	<i>Mr. Sami Ahmed</i>	<i>Son</i>	<i>Defendant No.4</i>
7.	<i>Mrs. Waseema</i>	<i>Daughter</i>	<i>Defendant No.5</i>
8.	<i>Mrs. Sadia</i>	<i>Daughter</i>	<i>Defendant No.6</i>

4. That the parties herein are governed by the Sunni Shariat Law and as such there shares after the Death of late Mohd Ahmed are as under:

1.	<i>Mst. Gulzar</i>	<i>First Wife</i>	<i>1/8th share</i>
2.	<i>Mst. Farzana Begum</i>	<i>Second Wife</i>	<i>1/8th share</i>
3.	<i>Mrs. Ghazala</i>	<i>Daughter</i>	<i>1/9th share</i>
4.	<i>Mr. Nabi Ahmed</i>	<i>Son</i>	<i>2/9th share</i>
5.	<i>Mr. Noor Ahmed</i>	<i>Son</i>	<i>2/9th share</i>
6.	<i>Mr. Sami Ahmed</i>	<i>Son</i>	<i>2/9th share</i>
7.	<i>Mrs. Waseema</i>	<i>Daughter</i>	<i>1/9th share</i>
8.	<i>Mrs. Sadia</i>	<i>Daughter</i>	<i>1/9th share</i>

3. Plaintiffs have already led their evidence and so is the case with defendants.

4. However, the sole grievance raised in the present petition is to the effect that in view of nature of the issues, the learned Trial Court should not have granted any opportunity to the plaintiffs to lead evidence in rebuttal.

5. It is submitted that such right is not available in respect of the issues, the onus of which is on the plaintiffs themselves.

6. The attention of the Court has also been drawn towards the issues which read as under:-

I. *Whether plaintiff is entitled for preliminary decree of partition as prayed for? OPP*



- II. *Whether plaintiff is entitled for decree of partition as prayed for? OPP*
- III. *Whether the plaintiff is entitled for decree of rendition of account as prayed for ? OPP*
- IV. *Whether the plaintiff is entitled for decree of permanent injunction? OPP*
- V. *Whether the plaintiff has valued his suit properly for the purposes Of Court-fees and jurisdiction? OPD*
- VI. *Relief*

7. As per the impugned order, the plaintiff had sought opportunity to lead rebuttal evidence in order to prove some proceedings instituted under Section 125 Cr.P.C. which DW-3 (Ms. Nasira Begum) seem to have denied.

8. It is, however, not clear as to who had instituted these proceedings and against whom and moreover, the copy of any such proceedings was never placed before the learned Trial Court and is stated to be not part of the pleadings either.

9. Issue notice to respondents through all permissible modes including dasti, returnable on 18th February, 2025.

10. Learned Trial Court is requested to defer the hearing to a date subsequent to the one given by this Court.

MANOJ JAIN, J

OCTOBER 28, 2024
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