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Amar Singh Vs. Jai Singh and ors.

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Court : Delhi

Decided On : Nov-10-1986

Reported in : 31(1987)DLT82

Judge : Sunanda Bhandare, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 40, Rule 1

Appeal No. : Civil Revision Appeal No. 180 of 1986

Appellant : Amar Singh

Respondent : Jai Singh and ors.

Advocate for Pet/Ap. : B. Krishan and; G.D. Gandhi, Advs

Judgement :

Sunanda Bhandare, J.

(1) This civil revision is directed against the order of the Additional District Judge. Delhi dated 2nd December 1985 passed on an application filed by the plaintiff under Order 40, Rule 1 read with Section 151 C.P.C. The Additional District Judge has directed the petitioner to deposit the rent in court in future and continue to do so till the disposal of the suit.

(2) It is contended by the learned counsel for the petitioner that the claim of the plaintiffs in the main suit for partition and rendition of accounts is only to the extent of 1/6th of his share in respect of land measuring 316 sq. yards comprised in Khasra No. 169 min situated in village Nangal Rai, Delhi Cantt. but the Additional District Judge has directed the petitioner to deposit the whole of the rent received by him. Moreover, it is contended that the application is not yet disposed of and is still pending before the trial court. Learned counsel states that if he is directed to deposit the whole of the amount of rent received, which is not even the claim of the plaintiff, irreparable hardship would be caused to the petitioner.

(3) On the other hand, learned counsel for the respondents/plaintiffs submitted that it has been claimed by the plaintiffs in the suit that the petitioner herein has only 1/5th share in the disputed property and, thereforee, in any event he is not entitled to keep whole of the rent.

(4) I do not think it is necessary for me to go into the question of apportionment between the parties in this revision petition. It appears to me from the order dated 18th November, 1985 and 2nd December 1985 that the application filed by the plaintiffs is still pending in the court of Additional District Judge, Delhi and this application could not be disposed of in view of the stay order granted by this Court. In order to do justice between the parties, the best course would be to see that this application filed by the plaintiffs is disposed of at an early date. Since the shares of the petitioner as well as of respondents has yet to be decided, the trial court can piss an order which will be equitable to both the parties and ensure that if the plaintiff is entitled to any mean profit he will get it as expeditiously as possible when the suit is ultimately decided. I, thereforee, direct the Additional District Judge, Delhi to dispose of the application filed by the plaintiff within two months from today.

(5) In the result the order dated 2nd December 1985 is set aside and the petition is allowed to the extent indicated hereinabove. The parties will appear before the Additional District Judge on 20th November 1986 on which date the learned Judge will fix the future time table. The trial court record be sent back forthwith. No costs.

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