

Smt. Bimla Devi Vs. Dinesh Kumar Gupta & Ors.

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Court : Delhi

Decided On : Nov-14-2014

Judge : Valmiki J. Mehta

Appellant : Smt. Bimla Devi

Respondent : Dinesh Kumar Gupta & Ors.

Advocate for Pet/Ap. : Mr. Bharat Singh Sisodia

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + C.M.(M) No.1011/2014 14th November, 2014 % SMT. BIMLA DEVI Through: Petitioner Mr. Bharat Singh Sisodia, Advocate. Versus DINESH KUMAR GUPTA & ORS. Through: Respondents CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. No.18513/2014 (exemption) 1. Exemption allowed subject to just exceptions. C.M. stands disposed of. + C.M.(M) No.1011/2014 and C.M. No.18514/2014 (stay) 2. This petition under Article 227 of the Constitution of India is filed by the defendant no.3 in the suit for partition impugning the order dated 17.2.2014 passed by the trial court striking off the defence of the petitioner/defendant no.3 inasmuch as petitioner/defendant no.3 did not comply with the earlier order passed by the court dated 29.10.2013 directing petitioner/defendant no.3 to file an affidavit with respect to rent received from all

the tenants of the suit property and thereafter to deposit the same in the court.

3. Before me, the admitted position which emerges is that the order dated 29.10.2013 till date has not been complied with. The effect is that the petitioner who is only one of the co-owners of the suit property and which was the property of the father in spite of the fact that as on date the Will propounded by the petitioner/defendant no.3 as a defence in the suit is yet to be proved, is taking the entire rent from all the tenants and is depriving all other co-owners of their shares of the rent in the property. It is not in dispute that the property originally belonged to the father and the tenants were also inducted by the father. I fail to understand how one coowner can take up an obdurate stand that she will appropriate the entire rent received from all the tenants of the property and keep on insisting to do so, and which thereafter has rightly resulted in striking off the defence of the petitioner/defendant no.3.

4. Powers under Article 227 of the Constitution of India are only to be exercised to prevent grave injustice. Powers under Article 227 of the Constitution of India which are discretionary and extraordinary powers are not meant to be exercised in favour of persons such as the petitioner who even during the pendency of the suit for partition, in spite of the Will propounded by her is not yet proved and by which exclusive ownership is claimed, refuse to deposit in the Court the shares of the other co-owners out of the rent received from the tenants of the property which was owned by the father.

5. Dismissed. VALMIKI J.

MEHTA, J NOVEMBER14 2014 Ne

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