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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 15th April, 2025***
+ CM(M) 680/2025 & CM APPL. 21565-21566/2025

DEVENDRI

.....Petitioner

Through: Mr. Sudeep Singh with Mr. Brijesh,
Advocates.

versus

AJAY PAWAR & ORS.

.....Respondent

Through: Mr. Ashish Shankar, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit for partition, declaration and injunction.
2. After completion of the pleadings on 20.05.2024, the learned Trial Court i.e. District Judge-05, South District, Saket Courts, New Delhi framed the issues and the following issue was treated as *preliminary issue*.

“1. Whether the present suit is liable to be stayed under Order 10 of CPC? OPD.”

3. However, when the arguments were heard on the abovesaid aspect, the issues, which had been framed by the other Court i.e. Court situated in Bulandshahr, were not placed on record.
4. Though, the learned Trial Court observed that there were other parties



in the suit filed at Bulandshahr but it was also of the view that since, the issues identified therein had not been placed before him, the suit could not have been stayed under Section 10 CPC.

5. Such order was passed on 31.07.2024.

6. Admittedly, the issues in the abovesaid suit filed at Bulandshahr had already been framed on 11.08.2023.

7. The omission on the part of the defendant (petitioner herein) was that it did not place on record copy of such issues before the Court of learned District Judge-05 South District, Saket Courts, New Delhi.

8. Defendant, accordingly, moved an application seeking review of the abovesaid order and such application was disposed of by learned Trial Court on 15.01.2025, while permitting the defendants to place on record copy of order framing such issues in a formal manner while also giving liberty to seek decision afresh on the aspect of Section 10 CPC.

9. It has been contended in the present petition that since the issues are substantially same, the suit filed in Delhi cannot continue in view of Section 10 CPC.

10. Learned counsel for respondent/plaintiff appears on advance notice and does not dispute the broad facts. He, however, submits that the suit filed at Bulandshahr has no bearing with respect to the suit filed in Delhi. At the same time, learned counsel for respondent stated that he would have no objection if the learned Trial Court reconsiders the abovesaid aspect of invocation of Section 10 CPC after analyzing the issues framed by the Delhi Court *vis-a-vis* the issues framed by Bulandshahr Court.

11. The case is, reportedly, fixed today before the learned District Judge-05, South District, Saket Courts for evidence purpose.



12. Keeping in mind the abovesaid concession and the observations appearing in impugned order dated 15.01.2025, the present petition is disposed of with request to the learned Trial Court i.e. Court of learned District Judge-05, South District, Saket Courts to consider the abovesaid *preliminary issue* afresh after giving due opportunity of hearing to both the parties.

13. However, the petitioner herein would ensure that the pleadings and the relevant order(s) passed by Bulandshahr Court are placed on record before the learned Trial Court to appreciate the controversy appropriately.

14. The present petition, along with pending applications, stands disposed of in aforesaid terms.

15. A copy of this order be given *dasti*, under the signatures of Court Master.

16. It is, however, clarified that this Court has not given any observation, either way, with respect to the point involved i.e. whether the suit in Delhi is required to be stayed under Section 10 CPC or not. It will be entirely upto the learned Trial Court to consider the same and dispose of such preliminary issue, in accordance with law.

(MANOJ JAIN)
JUDGE

APRIL 15, 2025/sw/js