

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 1226 of 2009

Reserved on: July 11, 2013

Decision on: August 29, 2013

SURINDER KAUR

..... Plaintiff

Through: Mr. C.P. Vig, Advocate.

versus

G.S. BAWA & ANR.

..... Defendants

Through: Mr. Sandeep P. Aggarwal with
Mr. Rajesh Pathak, Advocates in

IA No. 10783 of 2009

CORAM: JUSTICE S. MURALIDHAR

ORDER

29.08.2013

IA No. 10783 of 2009 (by Defendants u/O VII Rule 11 CPC), and
IA No. 15152 of 2012 (by the Plaintiff under Order VI Rule 17
CPC)

1. The background to these applications is that the aforementioned suit CS (OS) No. 1226 of 2009 was filed by Smt. Surinder Kaur as Plaintiff against Mr. G.S. Bawa and Mr. Rajvinder Singh, son of Mr. G.S. Bawa, Defendant Nos. 1 and 2 respectively, seeking relief of possession, declaration, permanent and mandatory injunction in respect of the ground floor of the property at A-1, Vishal Enclave, New Delhi ('the suit property').

2. It is stated in the plaint that, in terms of a compromise decree dated
CS(OS) No. 1226 of 2009

21st November 1974 passed in CS (OS) No. 165 of 1974, the entire property at A-1, Vishal Enclave was owned by Mr. Jwala Singh and his son Mr. Harminder Singh (the husband of the Plaintiff) in equal shares. The case of the Plaintiff is that the said property is a two and a half storey building on a plot of land measuring about 460 sq yds. Mr. Jwala Singh died on 14th June 1984 prior to which he left a Will dated 15th November 1983 in favour of his grandson Mr. Navinder Singh, the son of the Plaintiff. Consequently, it is claimed that Mr. Navinder Singh and Mr. Harminder Singh became co-owners of the entire property at A-1 Vishal Enclave and it remained undivided.

3. The case of the Plaintiff is that Mr. Harminder Singh "being of unsound mind and insane" was not in a position to look after, control, supervise and manage his affairs and his share in the suit property. It was being managed and supervised by one Mr. Gurvinder Singh who used to carry out various activities in the said property from time to time and the property used to be occupied by someone or the other either as a tenant or licensee. The Plaintiff states that she is permanently stationed in the United Kingdom ('UK') and used to visit India rarely. She further states that whenever she visited India, she remained under the impression that the ground floor of the suit property was occupied by tenants. According to her, Defendant No. 1 was only a tenant in the ground floor of the suit property. However, it is stated in para 4 of the plaint that "recently the Plaintiff came to know that the Defendant No. 1 has been representing as owner of ground floor of the said property which was a complete shock to the

Plaintiff who made extensive inquiries and it transpired that the Defendant No. 1 had made and coerced the husband of the Plaintiff to sell the ground floor of the property to the Defendant No. 1 and also misrepresented several facts before husband of the Plaintiff and accordingly, the Defendant No. 1 got a sale deed dated 17th May 2002 executed in his favour which has been shown as registered on 7th June 2002 and this was again a shock to the Plaintiff since there was no legal necessity and requirement to sell the ground floor of the said property to any one since the Plaintiff and her other family members are quite well off and were not in need of finance during the relevant period.”

4. The Plaintiff claims that during one of her visits from the U.K. she contacted Defendant No. 1 who confirmed the execution and registration of the sale deed in his favour in respect of the suit property (i.e. the ground floor of A-1, Vishal Enclave). He claimed that the suit property had been sold by Mr. Harminder Singh to him for a sum of Rs. 25 lakhs. In the circumstances, the Plaintiff has contended that “the said sale deed dated 17th May 2002 and shown as registered on 7th June 2002 is absolutely illegal, no-nest, void *ab initio* and not binding on the Plaintiff and is liable to be delivered up, cancelled and set aside” on the grounds set out in the plaint.

5. One of the grounds on which the sale deed dated 17th May 2002 is sought to be set aside is that Mr. Harminder Singh, who is shown as the seller, was not a person of sound mind and health since long and

“being insane was not in a position to understand and appreciate as to what is good and what is bad so far as his interest in the property are concerned and further being insane person was not competent to sell any part of the property to the Defendant No. 1 or to anyone and further said Mr. Harminder Singh was not competent to contract as per provisions of law.” Another ground is that Mr. Harminder Singh was not the sole owner of the suit property and there was no partition of the suit property by metes and bounds. Since there was no consent and permission of the other co-owner it could not be sold. It is stated that Defendant No. 1 being a stranger to the family was not to be sold any portion of the property. The sale deed was hit by Section 22 of the Hindu Succession Act apart from the Stamp Act and the Registration Act. It is further stated that the value of the suit property, as reflected in the sale deed, was grossly inadequate. Defendant No. 2 had been inducted by the Defendant No. 1 in the ground floor and was in negotiations to create third party interests in the suit property. In the circumstances, the present suit was filed.

6. Summons in the suit and notice in the application were directed to be issued to the Defendants on 10th July 2009. On 22nd August 2009, Defendant No. 1 filed I.A. No. 10783 of 2009 under Order VII Rule 11 CPC. Two grounds were urged in this application seeking rejection of the plaint. One was that the suit was not properly valued for the purposes of court fees and jurisdiction. On 9th November 2010, the issue of valuation of the suit for the purposes of Court fees and jurisdiction was taken up for consideration by the Court. It was

concluded that the value of the suit property should not be less than Rs. 3 crores. The Plaintiff was granted four weeks' time to pay the deficit court fees. An appeal against the said order dated 9th November 2010, being FAO (OS) No. 709 of 2010, was filed by the Plaintiff. Mr. Harminder Singh was shown as 'represented through Appellant No. 1 as his next friend'. The said appeal was dismissed as being without merit by the Division Bench on 21st December 2010. The differential court fees has since been deposited by the Plaintiff.

7. The second ground on which Defendant No. 1 seeks rejection of the plaint is that the suit is not maintainable as such since "Plaintiff No. 1 is neither competent nor authorized to file the present suit on behalf of Plaintiff No. 2." The above contention is based on the memo of parties in the suit which shows two Plaintiffs, i.e., Mrs. Surinder Kaur, Plaintiff No. 1 and Mr. Harminder Singh as Plaintiff No. 2. The opening page of the plaint, as filed in the Court, however shows only Mrs. Surinder Kaur as the sole Plaintiff. It has been rightly pointed out in para 10 of the application by Defendant No. 1 that "nowhere in the entire plaint it has been alleged that Plaintiff No. 1 was filing the suit as next friend of Plaintiff No. 2" It is further stated that no document has been described in the application which would show the alleged insanity or incapacity of Plaintiff No. 2 to file the suit. There is no averment that the Plaintiff has no interest adverse to that of Plaintiff No. 2. It is stated that the Plaintiff No. 1 could not have even otherwise filed the suit in her personal capacity as admittedly she has no right, title or interest in the suit property.

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8. Thirdly, it is submitted that the suit was filed on 30th May 2009, over seven years after the execution of the sale deed dated 17th May 2002, and therefore, was barred by limitation. In para 14 of the application it is stated that a copy of the plaint as served on the Defendants showed only one Plaintiff in the plaint and it was only subsequently when the matter was taken back under objections that "Plaintiff No. 2 was added and a changed memo of parties was filed." It is further averred that "a bare perusal of the changed plaint also reveals that no allegations whatsoever that there are two Plaintiffs or that Plaintiff No. 2 is represented by Plaintiff No. 1." A perusal of the verification also reveals that the same is only on behalf of one Plaintiff, and not two.

9. In the reply to this application, and in particular in reply to the averments to para 10, it is stated by the Plaintiff that "in the title of the suit and in the supporting affidavit, these facts have been mentioned that the Plaintiff No. 2 is being represented by Plaintiff No. 1 as his next friend and Plaintiff No. 1 has no interest adverse to that of the Plaintiff No. 2." While it is not denied that no document as regards the alleged insanity and unsoundness of mind of Plaintiff No. 2 has been described in the plaint, it is contended that "the Plaintiffs have ample proof" in that regard.

10. In reply to para 14 it is not denied that the plaint as served on the Defendants did not show that there were two Plaintiffs. However, it is denied that the Plaintiff subsequently added a party. It is stated that

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“sending of advance copy of plaint was not a requirement, but was sent as an intimation to the Defendants and thereafter the suit was filed after vacation after making necessary changes and the objection so raised is untenable and misconceived.”

11. I.A. No. 10783 of 2009 was dismissed by the learned Single Judge of the court by an order dated 8th February 2012. It was held that the question of limitation was a mixed question of fact and law and could be decided only after the trial concluded. No other point was argued. Aggrieved by the said order, Defendant No. 1 filed FAO (OS) No. 112 of 2012. By an order dated 2nd May 2012, the said appeal was allowed. The relevant portion of the said order read as under:

“In the course of hearing some peculiar facts have come to notice. The plaint as originally filed, appears to be on behalf of sole Plaintiff Mrs. Surinder Kaur wife of Sh. Harminder Singh. It is not disputed that Mrs. Surinder Kaur has no rights in the suit property nor can she claim any such rights. On the first page of the suit in the cause title there is insertion “and another” and the word “s” has been added to the Plaintiff. Similarly, in para 4 the word Plaintiff is succeeded by “No.1” at the end, while the remaining averments throughout the plaint are made as if they pertain to a sole plaintiff. This is also apparent from certain averments in the plaint which purportedly pertain to Plaintiff no.2 when in fact they are couched in a manner which allude to relationship between Plaintiff No.1 and Plaintiff No.2 for example the expression “husband of the Plaintiff” has been used in more than one place. In the cause of action, i.e, para 7 once again the alphabet “s” has been added after the

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word "Plaintiff". The similarly, at the end of the plaint, it is signed only by Smt. Surinder Kaur i.e., Plaintiff No.1. Even the verification of the plaint is by a sole plaintiff. The affidavit filed in support of the plaint is sworn only by Mrs. Surinder Kaur which adverts to the fact that the deponent has no interest "adverse to defendant No.2".

It is thus apparent that the suit was originally sought to be filed only by Smt. Surinder Kaur. Subsequently, insertions have been made to include her husband as plaintiff No.2, though the recital in the plaint is to the contrary. The memo of parties, however, incorporates both the Plaintiffs, i.e., Plaintiff No.1 and Plaintiff No.2. In our considered view such a defective plaint ought to have been rejected at the threshold as it did not call for an involved adjudication on this point for the court to come to the said conclusion.

Learned counsel for the Respondent faced with the aforesaid position states that he would like to move an application to seek amendment of the plaint to bring the plaint in conformity with law. We have put to learned counsel that a next best friend of a person who is alleged to be a person of unsound mind cannot be added as a Plaintiff in his/her own right.

There is also another aspect of the matter, that is, the question of limitation, which would also have to be examined on the basis of the averments made in the plaint. The facts set out in the plaint have to be read as a whole and not just the averment vis-a-vis the cause of action. To come to a conclusion that, the plaint is barred by time the issue of limitation would also have to be considered keeping this in mind without taking recourse to the impugned order. **We make it clear that if**

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the proposed amendment of plaint is at all allowed, and the learned single Judge is still of the view that the determination of the issue of limitation would require evidence, it would still be open to the Learned Single Judge to cast a preliminary issue on the question of limitation. Naturally being a preliminary issue it would then have to decide the same in the first instance. This alternative course would be adopted by the learned single Judge if he does not find that ex facie the plaint is liable to be rejected on various grounds including the plea of limitation taken in the application filed U/O 72 Rule 11 CPC of the Code of Civil Procedure. The appeal is accordingly allowed. Impugned order is set aside leaving parties to bear costs.” (emphasis supplied)

12. Thereafter, this Court took up for consideration IA No. 15151 of 2012 filed by the Plaintiff under Order XXXII Rules 1, 4 and 15 CPC seeking to be appointed as the next friend of Plaintiff No.2. On 10th January 2013 in the said application following order was passed:

“I.A. No. 15151 of 2012

This is an application filed by the Plaintiff no. 1, who happens to be the wife of the Plaintiff no. 2 for her appointment as next friend of her husband, who is being claimed by her to be a person of unsound mind.

The Defendant in his reply has opposed this application inter alia on the ground that Plaintiff No. 2 is not a person of unsound mind as is being claimed by the Plaintiff No. 1.

During the course of hearing of this application learned

counsel for the Plaintiffs submitted that though Plaintiff No. 2 is settled in U.K. but he would appear in Court so that this Court itself can adjudge whether he is a person of unsound mind or not without holding any formal enquiry and if at that stage this Court would consider it necessary to hold an enquiry that can also be done then. Let the Plaintiff no. 2 appear or be produced in Court on 4th April, 2013.

I.A. Nos. 8546/2009, 15150/2012 and 15152-53/2012

All these applications shall be taken up for consideration only after the disposal of I.A. No. 15151/2012."

13. Subsequently, on 4th April 2013, the following order was passed:

"Plaintiff no.2 has not appeared nor has he been produced by his wife. His presence was directed since his wife is claiming that he is a person of unsound mind and for that reason, she had sought her appointment as his next friend.

Counsel for the plaintiff submits that plaintiff no.2 could not be brought to India since his wife, plaintiff no.1 has recently undergone some operation in U.K. and she only could bring her husband and there is nobody else to bring him to India.

Counsel for defendant no.1 submits that plaintiffs are simply delaying the matter and even though there is no interim injunction operating against the defendants in the matter, but still plaintiff's son is creating all kind of problems in the peaceful enjoyment of the suit property of defendants.

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Mr. Navindra Singh, son of the plaintiff, is present in Court and he refutes the allegations and assures that he shall not be creating any hindrances in the peaceful enjoyment of the premises in question by the defendants. Let plaintiff no.2 now appear in Court or be produced either by plaintiff no.1 or their son on 22nd April, 2013.

Counsel for the plaintiff has submitted that in case on the next date, plaintiff no.2 is not produced, then this Court may pass any appropriate orders in the present application.

Renotify on 22nd April, 2013."

14. Pursuant to the above Mr. Harminder Singh appeared in Court along with the Plaintiff on 26th April 2013 and the following order was passed:

"IA No.15151/2012 (under Order XXXII Rules 1, 4 and 5 CPC)

Today, Mr. Harminder Singh, who is stated by his wife to be a man of unsound mind, has been brought to the Court. However, before consideration of the present application, which has been filed for appointment of guardian of the said Mr. Harminder Singh, it transpired that in fact in the entire plaint there is no reference of Mr. Harminder Singh as plaintiff No.2. The plaint shows that the only plaintiff was Smt. Surinder Kaur and she alone had signed the plaint also. The plaint was filed in the year 2009 and there was no averment in the plaint nor any application for appointment of guardian of the said Mr.

Har minder Singh had been filed along with the plaint. During the pendency of the suit, the defendant No.1 had filed an application under Order VII Rule 11 CPC, which however claimed to be rejected. Against the rejection order, the defendant No.1 filed an appeal before the Division Bench. The Division Bench while disposing of the appeal had also observed that a perusal of the entire plaint showed that it was the plaint of only one plaintiff, though in the memo of parties Mr. Har minder Singh had been shown as the plaintiff No.2. It was also observed that in para No.4 of the plaint, 'No.1' had been inserted against the word 'plaintiff' at one place. However, it appears that before the Division Bench a copy of that plaint was filed by the Defendant No.1 which he had received in which of course the plaintiff No.1 had been mentioned in para No.4 at one place, as admitted by the counsel for defendant No.1. However, in the original plaint, there is no such insertion in para No.4. Before the Division Bench, it had been submitted on behalf of the plaintiff that an amendment application would be moved to bring the plaint in conformity with law. Though one amendment application stands filed on behalf of the plaintiff but by way of that amendment application the plaintiff claims impleadment of Mr. Navinder Singh, son of Smt. Surinder Kaur and Mr. Har minder Singh as a co-plaintiff and for deleting the name of defendant No.2? Mr. Rajvinder Singh. That application is yet to be disposed of.

In view of the aforesaid situation, I am of the view that at this stage, there is no need of entering into any sort of inquiry to find out as to whether Mr. Har minder Singh is a person of unsound mind or not, since he is not even a

plaintiff in this suit nor his wife Smt. Surinder Kaur had filed the present suit on his behalf as his guardian. She had sought a declaration that sale deed in respect of suit property, which the defendant No.1 was having and purporting to have been executed by Mr. Harminder Singh, is a nullity because of the fact that Mr. Harminder Singh at the time of the execution of the sale deed was a man of unsound mind. This claim of Smt. Surinder Kaur is refused by defendant No.1 and, at an appropriate stage, final decision shall be taken in that regard.

This application, therefore, appears to be premature and is therefore dismissed.

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Counsel for plaintiff has now sought time to move another amendment application also to cure the above noted deficiencies in the plaint. As far as that aspect is concerned, no permission of the Court is required for that purpose. If any such application is even now moved, the same shall be dealt with in accordance with law as and when it is filed.

IA No.10783/2009

This application, which the defendant No.1 had filed earlier under Order VII Rule 11 CPC and as noticed already was dismissed by this Court, is to be heard again since the earlier order of dismissal of the same has been reversed by the Division Bench in appeal, referred to earlier.

List this application for hearing on 11th July, 2013.

Other pending applications if any shall also be taken up again on that date.”

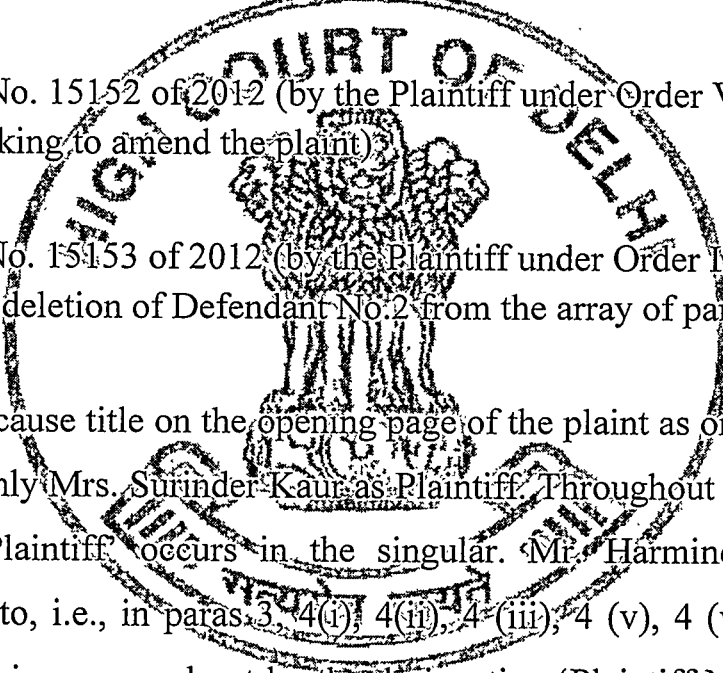
15. Submissions of learned counsel for the parties have been heard on the following applications:

(i) IA No. 10783 of 2009 (by Defendants under Order VII Rule 11 CPC)

(ii) IA No. 15150 of 2012 [by Mr. Navinder Singh under Order I Rule 10 CPC seeking impleadment as Plaintiff 1 (a)]

(iii) IA No. 15152 of 2012 (by the Plaintiff under Order VI Rule 17 CPC seeking to amend the plaint)

(iv) IA No. 15153 of 2012 (by the Plaintiff under Order I Rule 10 CPC for deletion of Defendant No.2 from the array of parties)



16. The cause title on the opening page of the plaint as originally filed shows only Mrs. Surinder Kaur as Plaintiff. Throughout the plaint the word “Plaintiff” occurs in the singular. Mr. Harminder Singh is referred to, i.e., in paras 3, 4(i), 4(ii), 4 (iii), 4 (v), 4 (vi), 4 (vii), 4 (ix), by his name and not by the designation ‘Plaintiff No. 2’. Para 5 refers to the Plaintiff in the singular. Below the prayer clause the signature is only by the Plaintiff in the singular. The affidavit in support of the plaint is by Mrs. Surinder Kaur and she declares on oath that “the Plaintiff has filed a suit for possession and declaration etc. and that *“the deponent has no interest adverse to that of Defendant No. 2.”* (emphasis supplied) The last mentioned words in italics have been added by ink and Mr. Vig, learned counsel for the

Plaintiff was candid to admit that he had added the said words by his own hand. There are no initials of the Plaintiff on the margin of this hand written addition. Therefore, in the entire plaint as available in the record of the Court the reference is only to one Plaintiff. The index page bearing the caveat report of the Registry also shows Mrs. Surinder Kaur as the sole Plaintiff. It is only in the memo of parties page, which does not bear any endorsement of any Court official, that the cause title shows two Plaintiffs, Mrs. Surinder Kaur as Plaintiff No. 1 and Mr. Harminder Singh as Plaintiff No. 2 and described as 'represented through Plaintiff No. 1 as next friend' and shown as having "no interest adverse as that of the Plaintiff No. 2." It does appear that the aforementioned memo of parties page was replaced during the re-filing of the plaint.

17. The Plaintiff filed an amended memo of parties on 31st May 2012 along with IA No. 15152 of 2012 under Order VI Rule 17 CPC. In para 2 of this application it is sought to be explained as under:

"2. That as is clear from the plaint and memo of parties, there are two Plaintiffs Nos. 1 and 2 which should have been mentioned as Plaintiff No. 1 and 2 at several places of the plaint but due to oversight and inadvertence, only Plaintiff has been mentioned which need correction at all places in the plaint."

18. The above submission is virtually an admission that the plaint refers to only one Plaintiff throughout. It is to overcome the above difficulty that the Plaintiff has filed IA No. 15152 of 2012 under

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Order 6 Rule 17 CPC seeking amendment to the plaint. The Court has for the purposes of the application under Order VII Rule 11 CPC, in light of the observations of the DB in its order dated 2nd May 2012, perused not only the plaint as originally filed but even the plaint with the proposed amendments as prayed for by the Plaintiff.

19. But even the amended plaint does no better than to substitute the word Plaintiff with the word "Plaintiff No.1." Though the plaint makes a reference to the fact that Plaintiff No.1 "recently" came to know about the sale deed dated 17th May, 2002 executed by the husband of Plaintiff No.1 in favour of Defendant No.1, it does not give any date of such knowledge. Also, the amended plaint makes no reference to the date from which Plaintiff No.2 became a person of unsound mind. It makes no reference to any documents in support of such claim. The claim in para 4 (vii) of the plaint as well as the amended plaint that Mr. Harminder Singh "was all alone in the property in question" in India when Defendant No.1 "prevailed upon him" to execute the sale deed in his favour appears wholly improbable if indeed Mr. Harminder Singh was, as is claimed by the Plaintiff, a person of unsound mind at that point in time.

20. Much prior to the filing of the amended plaint by the Plaintiff on 31st May 2012, Defendant No.1 filed his written statement on 22nd August 2009. Defendant No.1 on that very date filed an entire set of documents. Interestingly, along with the original plaint, the Plaintiff filed only the copy of the application and the decree sheet dated 21st

November 1974 in Suit No. 165 of 1974 in this Court which purportedly was a compromise decree to the effect that Mr. Harminder Singh and his father had equal shares in the property at Plot No.1, Sector B&C, Najafgarh Road, New Delhi. The Defendant No.1 on the other hand has filed the copy of the perpetual lease deed dated 27th January 1971 executed by the Municipal Corporation of Delhi (MCD) in favour of Mr. Harminder Singh in respect of Plot No.1, Sector B&C, Najafgarh Road; copy of the conveyance deed dated 15th November 1999 executed by MCD in favour of Mr. Harminder Singh in respect of the entire property at A-1, Vishal Enclave; registered sale deed dated 17th May 2002 executed by Mr. Harminder Singh in favour of Defendant No.1 in respect of the ground floor of A-1 Vishal Enclave; mutation dated 21st July 2009 by the MCD in favour of Defendant No.1; property tax receipts and electricity bills in favour of Defendant No.1. The originals of these documents were filed by Defendant No.1 in April 2011.

21. Therefore, even before filing the amended plaint, the Plaintiff knew that there was a lease deed followed by a conveyance deed executed by the MCD in favour of her husband which showed him to be the absolute owner, thus belying her claim that the property was ancestral in which Plaintiff 1 (a) and Plaintiff No.2 had equal shares. Yet, even in the amended plaint no relief in respect of these documents is claimed. It is improbable that Plaintiff was not aware of the said documents. A copy of the purported will dated 15th November 1983 (and not the original) of late Mr. Jwala Singh the father of Mr.

Harinder Singh was filed by the Plaintiff for the first time only on 18th March 2010 and this was after the written statement was filed by Defendant No.1. The three medical certificates dated 18th August 2000, 20th November 2001 and 17th November 2010 which purportedly speak of the mental unsoundness of Plaintiff No.2 were filed for the first time only on 14th March 2011. They have not been referred to as such in either the original plaint, or in the replication or even in the application filed under Order XXXII Rules 4 and 15 CPC (which as noted before was dismissed by the Court on 26th April 2013 as premature). Even otherwise, for the reasons discussed in this order, the Court need not go into the question whether Plaintiff No.2 is of unsound mind and requires to have a next friend appointed to represent him. Plaintiff No.1 in any event, even on her own showing, cannot lay any claim to the suit property as such.

22. As regards Plaintiff 1(a) there are no averments qua the lease and conveyance deed executed by the MCD in favour of his father which negate the claim of Plaintiff 1(a) that he is a co-owner of the suit property. In effect, there is no cause of action as regards Plaintiff No.1 (a).

23. The necessary averments, even in the amended plaint, that would enable the Court to appreciate whether the suit is even *prima facie* within limitation are vague and unsatisfactory. In effect, the amendments sought do not enable the Plaintiff to overcome many of the glaring defects pointed out in the written statement filed by

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Defendant No.1. Considering that there is a rebuttable presumption of genuineness as regards registered conveyance deeds, the burden on the Plaintiff to make out a case for declaring the registered sale deed dated 17th May 2002 in favour of Defendant No.1 is null and void, and that too seven years later, is considerable. A reading of the plaint, even in its amended version, along with the documents placed on record by the Plaintiff does not persuade the Court to hold that it discloses a cause of action to entertain the reliefs prayed for. Entertaining the suit would be a pointless exercise and a sheer waste of precious judicial time.

24. For the aforementioned reasons,

(i) IA No. 15150 of 2012 by Mr. Navinder Singh under Order I Rule 10 CPC seeking impleadment as Plaintiff 1 (a) is dismissed;

(ii) IA No. 15152 of 2012 by the Plaintiff under Order VI Rule 17 CPC seeking to amend the plaint is dismissed.

(iii) IA No. 10783 of 2009 filed by Defendants under Order VII Rule 11 CPC is allowed and the plaint is rejected. The suit CS (OS) No. 1226 of 2009 is dismissed. IA No. 15153 of 2012 does not survive and is disposed of as such.

S. MURALIDHAR, J.

AUGUST 29, 2013

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