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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 300/2012**

SURINDER KAUR Plaintiff

Through: Son of the plaintiff.

versus

KIRPAL SINGH & ORS Defendants

Through: Mr. Raghav Mahajan and Mr. Ankit Aggarwal, Advs. for L.Rs of Defendant nos. 4 and 5.
Mr. Arjun Tewari, Adv. for proposed defendants.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **16.02.2016**

1. On the first call a pass-over was sought as counsel for the plaintiff was not available. On the second call again counsel for the plaintiff is not available. A statement is made that counsel for the plaintiff is busy in Court No. 33 but the electronic board shows that admission matters in Court no.23 have been completed and in fact regular matter no. 17 is going on.

2. Learned counsel for the defendant no.1 very vehemently opposes further pass-over or an adjournment stating that suit is an abuse of the

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process of law and is liable to be dismissed on the admitted facts by applying Order 12 Rule 6 CPC.

3. Now, it is stated by Sh. Jasdeep Singh, son of the plaintiff, that, plaintiff's counsel has to appear in item no.26 in regular matters, and surely therefore, there is a deliberate non-appearance on behalf of the plaintiff, and the reasons will become clear from what is observed by me hereinafter.

4. As per the suit plaint, plaintiff claims right in two properties belonging to his father, first being commercial plot no. B-255, Naraina Industrial Area, Phase-I, New Delhi-110028 measuring 1200 sq. yds and the second property bearing no.B-102, Naraina Vihar, New Delhi-110085 measuring 125 yds.

5. A reference to the plaint shows that plaintiff has very conveniently not stated as to under which title deeds the father of the plaintiff late Sh. Maan Singh (who expired on 19.9.2009) was the owner of the aforesaid two properties. The ownership of an immovable property is only through a registered document in view of Section 17(1)(b) of the Registration Act. In law, and which is because of Order 6 Rule 4 CPC, a bland averment of ownership qua an immovable property is not sufficient inasmuch as

ownership of an immovable property has to be referred to a title document and plaintiff has to further plead continued ownership of the deceased of the suit properties on the date of death of the deceased. Not only Order 6 Rule 4 CPC requires this detail is to be given in the plaint, but this aspect becomes all the more important after passing of the Benami Transactions (Prohibition) Act, 1988 which states that once title deed is in the name of a particular person, such a person is an owner, with the only exceptions being of an HUF or a trust as per Section 4(3) proviso, and which pleadings of HUF or trust do not exist in the present suit plaint.

6. Defendant no.1 alongwith I.A No. 4575/2015 has filed two title deeds which show that half of the property bearing no. B-255 was purchased by the defendant no.1 from his father by a registered sale deed dated 4.12.2006 registered as Document No. 15,189 in Book-1 Volume no. 3292 at pages 168 to 178 and the other house was sold by the father to one Sh. K.L. Arora by registered sale deed dated 20.2.2004 by Document No. 106 in Book No.1, Volume no. 1274. Therefore, Sh. Maan Singh who died in 2009 was not the owner on his death with respect to any ownership interest in the property bearing no. B-255 and accordingly qua this property the suit is

dismissed with reference to Order 6 Rule 4 CPC of deliberate lack of averments of material particulars in the plaint and also because of Benami Transactions (Prohibition) Act which gives finality of ownership to an immovable property in terms of the title deeds.

7. So far as the property at B-102 is concerned, it is seen that the same was purchased by registered conveyance deed dated 22.5.2006 by defendant no.1 himself from one Sh. Bhagwan Singh and this conveyance deed is registered as a Document no.11,471 in Book no. 1 Volume no. 2055 and once again this shows that father was neither originally the owner of this property and nor the owner of this property on the date of his death, and therefore, for the self same reasons of Order 6 Rule 4 CPC and Section 4 of Benami Transactions (Prohibition) Act the suit plaint lacks cause of action and is thus liable to be dismissed under Order 12 Rule 6 CPC.

I may also note that copy of the registered sale deed of the B-102 property in the name of defendant no.1 is filed alongwith I.A 4575/2015 by the defendant no.1.

8. It is thus clear that the suit is a gross abuse of the process of law. Filing of Suit is simply an act of harassment of the defendant no.1 and filed

possibly in arm-twisting the defendant no.1 in giving some amounts to the plaintiff. It is high time that frivolous litigations in this country, which are not only a burden on the opposite parties, but they also tax the resources of the judicial system, should be not unnecessarily continued.

9. In view of the above, the suit is dismissed.

VALMIKI J. MEHTA, J

FEBRUARY 16, 2016

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