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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(OS) No. 678/2008, IA No.4514/2008 (under Order 32 Rule-1  
CPC), IA No.5697/2009 (under Order 39 Rules 1&2 CPC) and IA  
No.9484/2009 (under Order 22 Rule 4 CPC).  
MASTER AKASH ..... Plaintiff  
Through: Mr. Y.R. Sharma, Adv.

versus

ANIL KUMAR AND OTHERS ..... Defendants  
Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**  
**ORDER**  
% **15.11.2016**

1. None appears for the defendants.
2. The plaintiff filed this suit for partition against his father, grandmother and other siblings of his father.
3. This suit was entertained, though has been pending for the last eight years. No issues even are found to have been framed in the suit till now.
4. IA No.4514/2008 (under Order XXXII Rule-1), IA No.5697/2009 (under Order XXXIX Rules 1&2) and IA No.9494/2009 (under Order XXII Rule 4) of the Code of Civil Procedure, 1908 (CPC) all of the plaintiff are reported to be pending consideration
5. The counsel for the plaintiff seeks adjournment stating that the parents of the plaintiff are attempting an amicable settlement.
6. Suits cannot be kept pending in this fashion.
7. I have perused the plaint.

8. The plaintiff, in paras 1 to 12 of the plaint has pleaded the marital discord between his parents and the cruelty meted out by his father i.e. the defendant no.1 and his family i.e. the defendants no.2 to 6 to his mother. Thereafter (i) in para 13 it is pleaded that the parties to the suit are being governed by the Mitkaksara Law as applicable to Hindu Undivided Family (HUF); (ii) in para 14 it is pleaded that the paternal grandfather of the plaintiff was the owner of ancestral property consisting of five buildings bearing no.1810/3B *ad measuring* 700 sq. yds. situated at Kotla Mubarakpur Village, New Delhi – the said property is the ancestral property built from ancestral fund; (iii) in para 15 it is pleaded that the plaintiff as one of the co-parceners has half share out of the defendant no.1's 1/6<sup>th</sup> share in the said property; (iv) in para 17 it is pleaded that though partition was claimed by his mother acting for him but not given.

9. To say the least, the pleas in the plaint do not qualify as a plea of co-parcenary as laid down in the judgment in (i) ***Surender Kumar Vs. Dhani Ram*** 2016 SCC OnLine Del 333; (ii) ***Sangeeta Vs. Ramphool*** MANU/DE/2941/2016; and, (iii) ***Mukesh Kumar Vs. Pavitra*** MANU/DE/2287/2016 and do not disclose a cause of action for the plaintiff to sue for partition. The plaintiff has not pleaded as to when the paternal grandfather of the plaintiff died i.e. whether after coming into force of the Hindu Succession Act, 1956 or before that. The plaintiff though has pleaded five properties but given municipal number of only one. The averments in the plaint do not qualify as plea of co-parcenary in which the plaintiff would have a share by birth.

10. In the aforesaid circumstances, no purpose will be served in keeping this suit pending.

11. The plaint is rejected.

12. Needless to state that if no settlement is arrived at as claimed by the plaintiff between his parents, the plaintiff, subject to making proper pleas, shall be entitled to maintain a suit for partition.

13. I refrain from imposing costs.

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 15, 2016**

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