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

+ C.R.P. 30/2015

JASBIR SINGH

..... Petitioner

Through

Mr.Himanshu Gupta, Advocate.

versus

BALBIR KAUR & ORS

..... Respondents

Through

Mr.Rohit Gandhi and Mr.Manpreet
Kaur, Advocates

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **05.04.2016**

Petitioner is aggrieved by the order dated 14.01.2015 wherein the application filed by the petitioner/defendant in the Trial seeking a rejection of the plaint had been dismissed.

Contention of the defendant was that the plaint does not disclose a cause of action. It has not been validly instituted and the GPA on the basis of which the plaint has been filed shows that it has not been notarized by the competent authority at Ontario, Canada. Submission is that during the pendency of his application under Order VII Rule 11 of the CPC a second new plaint was filed which was taken on record. The petitioner aggrieved by that order had filed a CM(M) petition which had been disposed of by this Court on 16.12.2014 noting that this objection which has been now taken as a ground can be taken as a ground in the application under Order VII Rule 11 of the CPC. Submission before this Court is that this has not been considered by the Trial Court in the correct perspective.

Record shows that the present suit is a suit for mandatory and permanent injunction filed by the plaintiffs who are the residents of

Canada against their defendant uncle. Subject matter of the suit is an immovable property at Kalkaji. The case of the plaintiffs is that clandestinely and under fraud the defendant had got a conveyance deed executed in his favour qua that property. That conveyance deed has stood cancelled. The petitioner pursuant to this conveyance deed had gifted this property on 05.4.2010 to his son. The present suit has been filed seeking a cancellation of this gift deed dated 05.4.2010. Submission being that the conveyance deed already having been stood cancelled this gift deed which was a subsequent corollary to the conveyance deed has necessarily to be cancelled.

The initial plaint as filed by the plaintiff and the second plaint are verbatim the same. The only difference between the two plaints is that the second plaint is accompanied by a certificate certified by the Notary Public at Ontario and has been endorsed by the Consulate General of India at Toronto, Canada; this is a document dated 16.10.2014. Thus the second plaint as filed clearly shows that the Notary Public at Canada has notarized this plaint bearing the endorsement of the Consulate General of India at Toronto. Learned counsel for the petitioner points out that this new plaint has not been signed. This submission is wrong. The plaint has been filed through its authorized attorney and the signatures of both the plaintiffs Balbir Kaur and Jasbir Kaur appear thereon. This Court has been informed that Balbir Kaur and Jasbir Kaur are the senior citizen daughters of the erstwhile owner (Tara Singh). Tara Singh had died and as per the plaintiffs this immovable property fell to the share of the aforementioned two daughters. They are both senior citizens and residents of Canada.

They had filed this plaint from Canada and which is now being pursued through their power of attorney holder.

The impugned order had noted the facts in the correct perspective. The plaint which had been accompanied with a Certificate of notorization from the Competent Authority of Ontario was also endorsed by the Consulate General of India at Toronto, Canada. The requirements of the valid institution of a plaint were met with. A Bench of this Court in ILR (2008) I Delhi 1101 Crocodile Int. PTE Ltd. & Anr. Vs. Lacoste S.A. & Anr. based on an earlier dicta of this Court reiterated in Rajesh Wadhawa Vs. Dr. (Mrs.) Sushma Govil 37 (1989) DLT86 had noted that the notorial acts by the Notories in a foreign country could be given a legal recognition by the courts and authorities in India.

There is no other argument raised before this Court. The averments in plaint disclose of a cause of action and needless to reiterate that it is only the averments which are made in the plaint which are to be considered at the time of dealing with an application under Order VII Rule 11 of the CPC. The defence of the defendant cannot be gone into. The impugned order in this background suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 05, 2016/ndn