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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 593/2016**
MRS. KIRAN KHANNA Plaintiff

Through: Mr. Vidit Gupta, Adv.

Versus

SH. RAKESH KAPOOR & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **29.11.2016**

IA No.14770/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(OS) 593/2016 & IA No.14769/2016 (under Order XXXIX Rule 1&2 CPC)

3. The plaintiff has instituted this suit claiming partition of the estate comprising of immovable properties left by her parents and claiming that the plaintiff's parents died intestate.
4. The plaintiff in the plaint as well as in the notice preceding the suit to her brothers, impleaded as defendants no.1&2, admitted having executed relinquishment deeds. The counsel for the plaintiff at this stage states that the plaintiff did not execute the relinquishment deeds and only executed some documents and subsequently it was realised that the said documents were relinquishment deeds.
5. However what the counsel states is contrary to para 4 of the notice dated 28th March, 2016 preceding the suit and which is as under:

“4. That you have further represented that you are residing in West Delhi, which is far away from the residence of my client, therefore, finally prevailed upon my aforesaid client to execute the Relinquishment Deed with a solemn assurances and promises that upon completion of all the formalities in respect of residential plot in Rohini Residential Scheme, same would be sold under the consultation & concurrence of my client, which includes negotiation, and at that time value of all the properties would be assessed and accordingly out of the sale consideration of the plot in Rohini Residential Scheme, the amount would be paid to my aforesaid client and if fallen short, in that eventuality from one of the floor in shop located in Gaffar Market may be adjusted by giving the possession thereof to my client. At that time husband of my clientess was running his business of cloth in the area of Cloth Market Old Delhi-110006.”

6. It is quite obvious that there has been no application of mind before presenting the suit to the Court.

7. The plaintiff in the plaint has not sought any independent relief of declaration of the relinquishment deeds as null and void and has also not valued the suit for the said relief but has while claiming a decree for partition claimed the same “by declaring relinquishment deeds as null and void”. The plaintiff cannot be entitled to partition till the relinquishment deeds are declared as null and void and for which relief as aforesaid the plaintiff has neither valued the suit nor claimed a specific prayer.

8. Faced therewith, the counsel for the plaintiff states that the plaintiff is not in possession of the relinquishment deeds and the defendants in reply to the legal notice preceding the suit did not give the particulars of the same.

9. The defendants, in the reply, have set out the dates of the relinquishment deeds and it was for the plaintiff to inspect the records of the office of the Sub-Registrar and to obtain the documents.

10. The plaintiff also claims to have made an enquiry under the Right to Information Act, 2005 from the Delhi Development Authority (DDA) but therein also did not enquire about the relinquishment deeds.

11. The counsel for the plaintiff on enquiry whether the plaintiff has inspected the records of the DDA does not say anything.

12. Suits are not intended to be filed without knowing the facts and without proper pleadings. The plaintiff, without even filing the document and without making requisite pleas, cannot seek setting aside of the relinquishment deeds by declaration of the same as void and partition as consequence thereof.

13. Rather, the plea of the plaintiff in the legal notice preceding the suit as well as in the plaint is that the relinquishment deeds were executed by her on the assurance that after the defendants no.1&2 have got the plot at Rohini mutated in their name and have sold the same, they will pay the share of the plaintiff from the sale proceeds thereof. It does not mean that the plaintiff was made to sign the relinquishment deeds without knowing the consequences or purport thereof. The same is counter-indicative of the prayer even if any for declaration of the relinquishment deeds as void.

14. The suit as filed is totally misconceived and liable to be dismissed with costs.

15. The counsel for the plaintiff at this stage seeks to withdraw the suit with liberty to file again after making complete enquiries.

16. The same is permitted but subject to the plaintiff depositing cost of Rs.20,000/- with the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi and furnishing proof thereof along with a copy of this order in any proceedings hereafter filed by the plaintiff with respect to the estate of her parents.

17. Dismissed as withdrawn with liberty aforesaid subject to the aforesaid conditions.

RAJIV SAHAI ENDLAW, J

NOVEMBER 29, 2016

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