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

+ **CS(OS) 129/2017**

ATULL DUA & ANR. Plaintiffs

Through: Mr. Udyan Srivastava, Adv.

Versus

SATNAM SINGH & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.03.2017**

IA No.3365/2017 (for exemption)

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

CS(OS) 129/2017 & IA No.3364/2017 (u/O XXXIX R-1&2 CPC)

3. The two plaintiffs have sued for declaration that the sale deed dated 7th November, 2016 executed by the defendants no.1&2 viz. Satnam Singh and Trilochan Singh in favour of defendant no.5 Praveen Jain of property bearing No.L, South Patel Nagar, New Delhi-110008 is null and void and for recovery of a sum of Rs.1,64,29,150/- with interest from the defendants no.1&2 including from the aforesaid property.
2. It is *inter alia* the case of the plaintiffs that they had loaned the aforesaid amount to the defendants no.1&2 and which the defendants no.1&2 have failed to repay and the defendants no.1&2 vide agreements added 7th November, 2014 and 14th July, 2015 had furnished security

of the said property but have sold the same to the defendant no.3; hence the need for the relief of declaration.

3. The agreements aforesaid are unregistered and cannot be construed as deeds of mortgage. Without a registered deed, mortgage can be created only by way of deposit of title deeds by way of equitable mortgage and which is not the case of the plaintiffs.

4. I have thus enquired from the counsel for the plaintiffs as to on what basis the plaintiffs are seeking to recover the monies by sale of the property which now belongs to the defendant no.3.

5. The counsel for the plaintiffs states that the plaintiffs are not seeking to recover the monies from the defendant no.3.

6. Once that is the admitted position and there is no mortgage with respect to the property, the question of the plaintiffs being entitled to any relief of declaration as sought does not arise.

7. The counsel for the plaintiffs has otherwise not been able to justify as to how dues alleged to be due from the defendants no.1&2 are sought to be realized from the property aforesaid.

8. The plaint thus does not disclose any cause of action for any relief against the defendant no.3 or for relief of declaration of the sale deed as null and void.

9. The suit thus for the relief claimed of declaration and insofar as against the defendant no.3 is dismissed.

10. The only relief surviving is the relief of recovery of money from the defendants no.1&2.

11. The money sought to be recovered is Rs.1,64,29,150/- which is below the minimum pecuniary jurisdiction of this Court.
12. The plaintiffs merely by valuing the suit for the relief of declaration and for which the plaintiffs have not been found to be having any cause of action cannot be permitted to approach this Court.
13. The suit for the surviving reliefs is thus transferred to the subordinate court.
14. The plaintiffs as well as the defendants no.1&2 are disclosed to be residents of South Patel Nagar, New Delhi and Tilak Nagar, New Delhi.
15. The counsel for the plaintiffs on enquiry states that the said areas fall in District West, Tis Hazari Courts, Delhi.
16. The suit is transferred to the Court of the District Judge (West), Tis Hazari Courts, Delhi.
17. The counsel for the plaintiff to appear before the Additional District Judge / District Judge (West), Tis Hazari Courts, Delhi on 28th April, 2017.

RAJIV SAHAI ENDLAW, J

MARCH 17, 2017

‘gsr’..

