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

+ CS(OS) 217/2017 and I.A. Nos. 6067-69/2017

MRS. RENU KHULLAR Plaintiff

Through: Mr A.K. Singla, Sr. Adv. with
Mr.Rahul Shukla, Adv.

versus

MR. AARON (ALIAS ARUN) BHANDARI & ORS Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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17.05.2017

The present suit is a suit for declaration, partition, possession and injunction. The plaintiff is the daughter of deceased Dr.Shiv Bhandari. There are four defendants of whom defendant Nos. 1 and 2 are her brothers; defendant No. 3 is her sister. Their mother Smt. Raj Kumar Bhandari has also expired. The office of the Land and Development has been arrayed as defendant No. 4.

Averments in the plaint disclose that House No. 206, Block No.10, Golf Links New Delhi which was initially in the joint names of the parents of the plaintiff, namely, Dr.Shiv Nath Bhandari and Dr. Raj Kumari Bhandari was thereafter mutated in the sole name of Late RKB. This was on 08.05.1972. Dr. Raj Kumari Bhandari had written a Will dated 26.03.1979 by virtue of which she has bequeathed this property in favour of her two sons. No share was given to her daughters. A family settlement dated 11.11.1980 was entered *interse*

the parties. In terms of this family settlement defendant Nos. 1 and 2, that is, the two sons of late Dr. RKB were to be given 50% share in the suit property. Defendant Nos. 1 and 2 i.e., Aaron Bhandari and Sanjiv Bhandari have been described as a HUF. The property was thereafter jointly mutated in the name of Aaron Bhandari and Sanjiv Bhandari by the Land and Development Office. On the demise of either brother, their properties would devolve upon their families. This family settlement was signed by all the parties including the plaintiff. The plaintiff on 11.11.1980 was Renu Khullar; she was unmarried; she has since then got married. The fact that this document has been signed by her is an admitted fact.

The prayers in present plaint read as follows:-

- (A) Decree of declaration thereby declaring that Deed of Settlement dated 11.11.1980 registered as Document No. 529, Addl. Book No. I, Vol. No. 4422 on pages 48-49 dated 19.02.1981 in the office of Registering Authority, New Delhi, annulled, cancelled and superseded all acts, deeds made or performed between parties in pursuance to Will dated 26.03.1979.
- (B) Decree of declaration thereby declaring that abovesaid Deed of Settlement dated 11.11.1980, upon not being acted upon and otherwise abandoned by defendants No. 1 and 2 in terms thereof, left estate of mother of parties (Smt. Raj Kumari Bhandari) open to succession in accordance with Section 15 of Hindu Succession Act, 1956, pending adjudication on deceased mother's last Will dated 25.05.2006 sub-judice in Probate Case No. 324/2014 pending between the parties.

- (C) Decree of declaration thereby declaring plaintiff's share in estate of Smt. Raj Kumari Bhandari described in Schedule to the plaint in accordance with prayer made vide clause (B) above.
- (D) Decree of partition of suit property described in Schedule in accordance with share of the parties so determined by passing preliminary decree followed by final decree in accordance with provisions of Order XX Rule 18 CPC.
- (E) Decree for possession against defendant Nos. 1 and 2 thereby placing plaintiff in vacant peaceful possession of property/House No. 206, Block 1, Golf Links, New Delhi- 110003 situate on plot admeasuring 375 sq.yds. (313 sq.mtrs.) of partition falling to her share in accordance with law.
- (F) Decree of mandatory injunction thereby directing and ordering defendant No. 4 to recall/annul all proceedings/orders made by them in respect to property/House No. 206, Block 10, Golf Links, New Delhi -110003 situate on plot admeasuring 375 sq.yds. (313 sq.mtrs.) in pursuance to defendant Nos. 1 and 2 application dated 25.10.2007 obtained on basis of annulled and superseded 26.03.1979 Will, produced by defendant No. 4 on 17.10.2007 in pending probate litigation between parties.
- (G) Award the cost of suit in favour of plaintiff and against defendant Nos. 1 and 2
- (H) Pass such further order(s), considered just fit, proper and expedient in the circumstances of the case.

All these prayers are based on the Deed of Declaration dated 11.11.1980; the plaintiff wants this Declaration Deed to be declared null and void, in terms of the Section 15 of the Hindu Succession Act the property to be devolved upon the plaintiff; as a necessary corollary a decree of partition and declaration has also been sought.

At the outset, a question has been put to the plaintiff as to how the suit is within the limitation as the challenge has been made to family settlement dated 11.11.1980; under Article 58, Schedule I of the Limitation Act, a period of three years is prescribed to obtain such a declaration which period is to commence from the date of the document; admittedly this document having been signed by the plaintiff was well within the knowledge of the plaintiff on 11.11.1980. There is no answer with the plaintiff. Contention of the plaintiff is that the cause of action arose upon the death of the mother of the parties i.e., on 21.09.2007 and when the hand written Will of their mother dated 25.05.2006 was detected.

This court is of the view that this litigation is nothing but a *mala-fide*. The plaintiff sister does not appear to be happy with the settlement deed to which she admittedly was a party; it is not her case that settlement dated 11.11.1980 has been obtained fraudulently / under collusion or has been coerced out of her. This document was admittedly signed by her on 11.11.1980 when she was a full major and knew very well the contents and consequences of the documents. Her having woken up in the year 2017 to file this present litigation is nothing but an attempt to set up a time barred claim which over this period of time now lapsed and for which the hurdle of limitation not

having been crossed will not allow the suit to proceed. Such kind of vexatious litigation has to be nipped in the bud. Under Section 3 of the Limitation Act, it is the bounden duty of the Court to examine this bar before permission can be accorded to such a litigant to proceed with the litigation. The suit is being barred by time and misconceived, this Court is of the view that the suit be dismissed with exemplary costs. Suit is dismissed with costs quantified at Rs. 50,000/-.

INDERMEET KAUR, J

MAY 17, 2017
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