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

+ C.R.P. 191/2017

DINESH KUMAR ARORA

..... Petitioner

Through: Mr. Amit Chadha & Mr. Deepal Goel,
Advs.

Versus

BHOLA NATH ARORA

.... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.08.2017**

CM No.31494/2017 (for exemption)

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

C.R.P. 191/2017 & CM No.31493/2017 (for stay)

3. This Revision Petition under Section 115 of the CPC impugns the order [dated 31st May, 2017 in Civil Suit No.131/2016 of the Court of Civil Judge-03, Central District, Tis Hazari Courts, Delhi] deciding the two issues ordered to be treated as preliminary issues, in the suit filed by the respondent/plaintiff against the petitioner / defendant.
4. The respondent / plaintiff has instituted the suit from which this petition arises, for declaration that in view of the oral partition of property and Family Settlement and in view of the deed of Family Settlement dated 20th September, 1998, the respondent / plaintiff became the exclusive owner of the second floor portion of property No.A-1, 62, Lajpat Nagar, New Delhi and is entitled to deal with the said portion as exclusive owner thereof and that the petitioner / defendant and other defendants in the suit (who have not

been impleaded in this petition) are left with no right in the said portion and for perpetual injunction to restrain the defendants in the suit from claiming any rights in the property.

5. The first argument of the counsel for the petitioner / defendant is that the deed of Family Settlement is unregistered.

6. Attention of the counsel for the petitioner / defendant is invited to the dicta of the Supreme Court in ***Kale Vs. Deputy Director of Consolidation*** (1976) 3 SCC 119 saying that technicalities of non-stamping and non-registration did not apply to Family Settlements and also to the dicta of the Division Bench of this Court in ***Satya Pal Gupta Vs. Sudhir Kumar Gupta*** (2016) 230 DLT 73 holding that registration is not necessary even if rights in an immovable property in which one of the family members had no earlier right, are created for the first time. It thus cannot be said that the claim of the respondent / plaintiff for declaration on the basis of Family Settlement is liable to be thrown out at the threshold as was purported to be done by having a preliminary issue framed.

7. The second contention of the counsel for the petitioner / defendant is that the suit filed by the respondent / plaintiff for declaration alone, without claiming relief of possession, is not maintainable.

8. The learned Civil Judge in the impugned order has reasoned that it was the case of the respondent / plaintiff that the said second floor is tenanted and though pursuant to the Family Settlement the tenant was to pay the rent to the respondent / plaintiff but taking advantage of the absence of the respondent / plaintiff from India, the defendants started realising the rent from the tenant in the property in violation of the Family Settlement;

that since the tenant was in possession of the property, the respondent / plaintiff was not required to seek possession and on a decree for declaration and injunction being granted, the tenant would start paying the rent to the respondent / plaintiff.

9. The counsel for the petitioner / defendant does not dispute that a tenant is in possession of the property. The argument that the possession is of the petitioner / defendant owing to the tenant paying rent to the petitioner / defendant is of no avail at the stage akin to that of Order VII Rule 11 of the CPC.

10. No other argument has been urged.

11. Else, the impugned order is found to be well reasoned.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 30, 2017

‘gsr’..