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

+ **CS(OS) 554/2017**

SOURAVI MONDAL Plaintiff

Through: Mr. Kishore M. Gajaria, Adv.

Versus

JHARNA MONDAL & ORS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **11.12.2017**

IA No.14705/2017 (of the plaintiff for amendment of the plaint) and IA No.14704/2017 (of the plaintiff for condonation of 25 days delay in re-filing the same)

1. Summons of the suit have not been issued as yet.
2. Allowed and disposed of.

CS(OS) No.554/2017

3. Amended plaint is taken on record and has been perused.
4. The plaintiff has sued her mother, brother and sister for partition of residential house No.G-1355, Chittaranjan Park, New Delhi and commercial shop No.1039, Ward No.XVI, Plot No.1333/1121, Block No.B, Gali No.17, Naiwala, Karol Bagh, New Delhi and for permanent injunction restraining the defendants from dispossessing the plaintiff from property No. G-1355, Chittaranjan Park, New Delhi.
5. Qua the property at G-1355, Chittaranjan Park, New Delhi, it is the case of the plaintiff herself that the said property was purchased as far back

as in the year 1971 by her father in the name of her mother i.e. the defendant no.1 and a Conveyance Deed of the said property was also executed in favour of the defendant no.1 in the year 1993.

6. It is further the case of the plaintiff that upon the demise of the father of the plaintiff on 14th January, 2016, the plaintiff has a 1/4th share in the said property.

7. Once it is admitted by the plaintiff that property No.G-1355, Chittaranjan Park, New Delhi is in the name of the mother of the plaintiff, the plaintiff merely by averring that the sale consideration for the said property had flown from her father and that the mother was merely a “caretaker” of the property, (see para 7 of plaint), cannot maintain a suit for partition as an heir of her father. Such a claim is in the teeth of the Prohibition of Benami Property Transactions Act, 1988.

8. The plaint insofar as for the relief of partition of property No. G-1355, Chittaranjan Park, New Delhi does not disclose any cause of action and is liable to be rejected.

9. As far as the shop bearing No.1039, Ward No.XVI, Plot No.1333/1121, Block No.B, Gali No.17, Naiwala, Karol Bagh, New Delhi is concerned, the plaintiff herself has stated that she does not even know whether the said shop has been disposed of or not. Such pleas do not constitute any cause of action for partition of the said shop as well.

10. The counsel for the plaintiff faced therewith states that he is pressing the suit only for the relief of permanent injunction restraining the defendants from dispossessing the plaintiff from property No. G-1355, Chittaranjan Park, New Delhi.

11. The plaintiff, to seek such injunction, will have to value the suit for the relief of injunction at over Rs.2 crores and which has not been done. The jurisdiction of this Court was invoked on the basis of valuation of the property bearing No. G-1355, Chittaranjan Park, New Delhi being in excess of Rs.2 crores and the plaintiff being in possession thereof.

12. The counsel for the plaintiff then states that he will obtain instructions.

13. The suit has already been adjourned several times on such pleas and once the plaintiff inspite of filing the suit has not been able to justify its maintainability till now, no ground for further adjourning the same today is made out.

14. The suit is dismissed as not maintainable with liberty to the plaintiff to sue for the relief of permanent injunction against forcible dispossession save by due process of law from property bearing No. G-1355, Chittaranjan Park, New Delhi and if gives necessary particulars with respect to the shop bearing No.1039, Ward No.XVI, Plot No.1333/1121, Block No.B, Gali No.17, Naiwala, Karol Bagh, New Delhi, to sue for partition thereof.

15. The date already given of 22nd January, 2018 is cancelled.

No costs.

Dasti.

RAJIV SAHAI ENDLAW, J

DECEMBER 11, 2017

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