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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 186/2018 & CM 5832/2018 & CAV 126/2018**

SATENDRA PRAKASH KAUSHIK Petitioner
Through: Mr. Arun Kumar Gupta, Advocate.

versus

VIRENDRA PRAKASH KAUSHIK & ORS Respondents
Through: Ms. Purnima Maheshwari, Advocate
for R-1.
Ms. Megha Katari with Ms. Shabista
Nabi, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **16.02.2018**

Caveat No.126/2018

Since the counsel for the caveator/respondent No.2 has appeared, the caveat stands discharged.

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1. The impugned order dated 22.12.2017 was passed by the additional district judge in the proceedings arising out of civil suit (CS No. 96/16 - New CS No. 613949/2016) which was instituted by the petitioner (plaintiff) in 2007 seeking primarily the relief of declaration to the effect that the memorandum of family settlement dated 15.07.2005 is null and void with consequential relief of declaration as to the extent of his share in the estate left behind by the predecessor-in-interest of the parties.

2. The issues were framed on 26.03.2008. Besides some framed on the preliminary objections taken by the defendants including on the ground of *res-judicata* and estoppel, the prime issue is to the effect as to whether the plaintiff is entitled to declaration. The plaintiff led evidence and closed it on 07.05.2012. Thereafter, the defendants led evidence which stood concluded on 23.01.2017.

3. The case thereafter had reached the stage of final arguments when application was moved by the plaintiff on 07.08.2017 seeking liberty to lead additional evidence in rebuttal concerning a document Ex.PW1/D3A, prayer also being for liberty to be given for opinion of hand-writing expert to be obtained and brought on record. The said prayer was declined by the additional district judge by order dated 22.12.2017 which is under challenge by the petition at hand.

4. Having heard the learned counsel for the petitioner/plaintiff and having gone through the record, this Court finds no error or infirmity in the view taken by the court below. The document in question, a copy whereof has been submitted as part of the paperbook (page 93), purports to be a draft described as “declaration-cum-agreement”. It was produced by the plaintiff in answer to some questions put to him during his cross-examination at the hands of third defendant. It was a document which was never originally relied upon by the plaintiff nor copy shared, in any manner, with the parties or the court.

5. Be that at it may, the relevance or otherwise of the said document was well within the knowledge of the petitioner/plaintiff all along, inasmuch as it was a document which had come on record

from his own custody and control. He closed the evidence on 07.05.2012 without reserving right to lead evidence in rebuttal. Even during the course of evidence of the defendants, which exercise continued till 23.01.2017, no effort was made by him to have the authenticity of the document or of the signatures or writings thereupon being confirmed.

6. In these circumstances, the move was highly belated with no explanation for omission to take such steps as are now sought to be undertaken even offered.

7. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J

FEBRUARY 16, 2018

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