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

+ FAO(OS) 47/2018, Cav.No.223/2018 & CM Nos. 10506,
10507/2018

SATISH CHAND GUPTA & ANR

..... Appellants

Through : Mr.Shiv Charan Garg and
Mr.Imran Khan, Advocates

versus

SANJEEV KUMAR GUPTA & ORS

..... Respondents

Through : Mr.Lalit Gupta and
Mr.Siddharth Arora, Advocates for R-1
and R-2.

Mr.Gautam Jha and Mrs.Sweta Jha,
Advocates

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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06.04.2018

1. By way of the present appeal, the appellant assails an order dated 16th January, 2018 to the extent that it rejects I.A. No.15497/2011 (under Order VII Rule 10 and 11 of the CPC) filed by the appellant/plaintiff seeking return/rejection of counter-claims filed by respondent Nos.1 to 3 (defendant Nos.1 to 3) in CS(OS) No.2463/2010 and CC No.34/2011.
2. It appears that the respondent Nos.1 to 3 had filed a counter-

claim to the appellant's suit for partition of property No.2/2, Roop Nagar, Delhi-110007 which was owned by Shri Ved Prakash Gupta, father of the parties.

3. The respondents have filed a counter-claim seeking rendition of accounts regarding immoveable properties of Shri Ved Prakash Gupta and of the firm M/s Phool Chand Satish Chand. The primary ground which is prayed before us is to reiterate that the counter-claim was barred by limitation and that M/s Phool Chand Satish Chand was not a party to the suit.

4. It is submitted by Mr.Lalit Gupta appearing on behalf of the respondent Nos.1 and 2, as Caveator, that eviction proceedings were pending against the said tenant which have been filed by the defendant Nos.1 and 2 under authorisation of the other three brothers including the appellant and that the appellant has no authority whatsoever to attempt to take possession from the tenant without even informing the other brothers.

5. Mr.Lalit Gupta, Advocate has further submitted that the appellant is guilty of concealment of facts and that he has concealed the fact that after the passing of the order dated 16th January, 2018, the appellant has dishonestly and mischievously attempted to take possession of the portion of the property No.2/2, Roop Nagar, Delhi-110007 and thereafter filed an application being I.A. No.2513/2018 (under Order XXIII Rule 1 of the CPC) seeking leave to withdraw the suit.

6. Copy of the order dated 22nd February, 2018 passed by the learned Single Judge on this application has been placed before us

which manifests this position.

7. It appears that on the request of the respondent Nos.1 and 2, who express their willingness to pursue their suit for partition, these respondents stand transposed as plaintiffs.

8. So far as the impugned order is concerned, this position has been disputed by learned counsel for the appellant/plaintiff.

9. So far as the application for rejection of the plaint/returns of the rejection of counter-claims is concerned, the learned Single Judge has recorded the following reasons for dismissal of the application:

" The plaintiffs/applicants seek return/rejection of the Counter Claim made by the defendants no. 1 to 3 for rendition of accounts of movable properties of Ved Prakash Gupta and of the firm M/s Phool Chand Satish Chand.

It is argued by the counsel for the plaintiffs/applicants that (i) Shri Ved Prakash Gupta aforesaid was a partner, having 25% share in M/s. Phool Chand Satish Chand; (ii) that one Ram Sarup was the other partner in the said M/s Phool Chand Satish Chand; (iii) that the defendants, in the counter claim have sought rendition of accounts of M/s. Phool Chand Satish Chand; and that the said accounts will have to be rendered by the other partner of the firm Ram Sarup and who, being a third party to the suit, cannot be impleaded in the counter claim and the counter claim is thus not maintainable and is liable to be rejected and/or separated from the suit."

10. Nothing has been pointed out to enable us to take a view different from the view taken by the view taken by the learned

Single Judge.

11. At this stage, Mr. Shiv Charan Gupta, learned counsel for the appellant submits that the issue regarding the plea that the counter-claim in respect of the share of Shri Ved Prakash Gupta in the partnership is barred by the limitation, be left open for adjudication. Certainly, the view expressed in the impugned order is a *prima-facie* view. In case such a counter-claim is filed by the appellant, it shall be open for the appellant to press an issue for the same at the time of framing of issues and this issue would be decided in accordance with law.

12. This appeal is dismissed with the above observations.

13. It is submitted by the counsels who are present in this court that in CS(OS) No.2463/2010 and CC No.34/2011 which are pending between five sons and six daughters of late Shri Ved Prakash Gupta regarding his estate that the efforts for negotiated settlement are possible. Learned counsels seek an opportunity to discuss the possibility thereof by the course of mediation.

14. We are also of the view that such efforts deserve to be made and possibility of a negotiated settlement may be explored.

15. It is further directed that the parties to the present appeal or their authorised representative shall appear before Mr. Rajiv Aggarwal, Mediator at the Delhi High Court Mediation and Conciliation Centre.

16. It shall be open for the Mediator to call for any party which is not present before us for participating in the mediation if deemed necessary.

17. List on 9th April, 2018 at 3:30 pm.
18. In case of settlement in the mediation, the same shall be placed by the Mediator before the learned Single Judge in CS(OS) No.2463/2010 and CC No.34/2011.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 06, 2018

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