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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 129/2018 & IA No.4274/2018 (u/O XXXIX R-1&2 CPC)
RUCHI GUPTA Plaintiff
Through: Mr. Sanjeev Kumar & Mr. Wahid Ali,
Adv.
Versus
SWATI GUPTA & ORS. Defendants
Through: None.
AND
CS(OS) 130/2018 & IA No.4276/2018 (u/O XXXIX R-1&2 CPC)
RUCHI GUPTA Plaintiff
Through: Mr. Sanjeev Kumar & Mr. Wahid Ali,
Adv.
Versus
SWATI GUPTA & ORS. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.04.2018

IA No.4275/2018 in CS(OS) No.129/2018 and IA No.4277/2018 in CS(OS) No.130/2018 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CS(OS) 129/2018 & CS(OS) 130/2018

3. CS(OS) No.129/2018 has been filed for partition of property bearing No.PU-105, Plot No.105, Block PU, Pitampura, Delhi-34, averring i) that the paternal grandfather of the plaintiff was the owner of the property; ii) that the said paternal grandfather died during the minority of the plaintiff; iii) that the paternal grandfather along with father of the plaintiff (defendant

no.4) and the other siblings of the plaintiff was residing in the said property; iv) that the plaintiff after her marriage has been residing in her matrimonial home; v) that the plaintiff was recently informed by the wife of defendant no.2, brother of the plaintiff, that the paternal grandfather of the plaintiff left a Will bequeathing the property exclusively to the plaintiff and her sister, impleaded as defendant no.1.

4. The plaintiff has filed this suit for partition of the property and for declaration that the occupation of the defendants no.2 to 4 (defendant no.3 is another brother of the plaintiff) of the said property is unauthorized and for permanent injunction restraining the defendants from dealing with the property.

5. The plaintiff along with the suit has filed the original Will executed by her paternal grandfather.

6. A perusal of the original Will shows the same to have been attested by only one witness. I have thus enquired from the counsel for the plaintiff as to how the said document can qualify as a Will.

7. The counsel for the plaintiff though agrees that a Will is essentially required to be attested by two witnesses and that though he has filed the present suit but states that he was not aware of the said fact and seeks time to obtain instructions from his client.

8. Not only so, the suit has been filed not only against the other alleged co-sharer i.e. the defendant no.1, but also against persons in unauthorized occupation of the property but without claiming the relief of recovery of possession. A mere declaration of the possession of the defendants no.2 to

4 being unauthorized cannot suffice.

9. It is quite obvious that the suit even otherwise is totally misconceived and bereft of any legality and the plaint therein is liable to be rejected.

10. Subject to the plaintiff depositing costs of Rs.10,000/- with the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi for today's adjournment, list on 16th May, 2018.

11. CS(OS) No.130/2018 has been filed by the plaintiff against the same defendants i.e. her sister and two brothers, impleaded as defendants no.1 to 3 and against her father, impleaded as defendant no.4, for partition of property No.C-42/3, Lawrence Road, New Delhi, again stated to be belonging to the paternal grandfather of the plaintiff who has left a Will with respect to the said property also bequeathing the same to the plaintiff and the defendants no.1 to 3.

12. The original Will filed with the said suit is also attested by one witness only and does not qualify in law as a Will.

13. The counsel for the plaintiff at this stage states that the plaintiff unconditionally withdraws both the suits.

14. Dismissed as withdrawn.

15. In view of the above, the cost imposed above is waived.

16. That date of 16th May, 2018 is cancelled.

RAJIV SAHAI ENDLAW, J

APRIL 03, 2018

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