

\$~6

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

+ **CS(OS) 224/2018 & I.A.Nos. 6471-72/2018**

SH. UDAI SINGH & ANR

..... Plaintiffs

Through: **Mr. Raj Bahadur Singh and Mr. Arun
Kumar Kaushik, Advocates.**

versus

SMT. ROSHNI DEVI & ORS

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% 10.05.2018

1. This suit is disposed of as not pressed as the plaintiffs are already defendants in the suit for partition filed by the defendant no.7 of the present suit. That suit is pending in the Court of Additional District Judge at Saket Courts, New Delhi. Even assuming one or two extra properties are not the subject matter of the earlier suit even then, this suit cannot be filed, as at best present plaintiffs who are the defendants in the earlier suit can always seek to get the properties which are left out to be added for partition being granted even with respect to those additional properties and filing of a fresh suit is not necessary once admittedly between all the parties to the present suit an earlier suit is pending. Admittedly the common ancestor, who is

pleaded to be owner of the suit property is Mr. Nathu, both in the present suit plaint as also in the earlier suit for partition which is pending. It is only if the earlier suit for partition is dismissed for some reason and the present plaintiffs are not transposed as plaintiffs in the earlier suit can a fresh suit be filed for partition and that too in accordance with law.

2. In view of the aforesaid observations, counsel for the plaintiff prays for withdrawal of the suit which is allowed. It is clarified that in case any fresh suit is filed by the plaintiffs, then plaintiffs will necessarily state the factum of filing of the present suit in the subsequently instituted suit and plaintiff will specifically bring this order to the notice of the Court before whom the subsequent suit which may be filed by the present plaintiffs comes up.

3. The suit is accordingly disposed of as withdrawn with the aforesaid observations.

VALMIKI J. MEHTA, J

MAY 10, 2018

ib