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

+ **FAO 259/2018, CAV 492/2018, CM APPL. 21771/2018, CM APPL. 21772/2018**

ATUL KRISHAN SINGH

..... Appellant

Through: Mr. Abhijat and Mr. Shaashwat
Jindal, Advocates along with
Appellant in person.

versus

ACHAL SINGH & ANR

..... Respondents

Through: Mr. Gaurav Dhama, Mr. Jai Bansal
and Mr. A.K. Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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23.05.2018

The appellant impugns an order dated 16.04.2018 declining the interim relief for creation of third party rights in the suit property. The order has reasoned as under:-

“6. I have gone through the file. The plaintiff has filed the present suit of partition for declaring him as owner of one third share in the suit property by virtue of family settlement dated 15.02.2016 executed between the parties. The suit property was allotted by the DDA in the name of defendant no.1 who is the father of the plaintiff. The plaintiff has not filed the original of the document i.e. family settlement dated 15.02.2016 and the said document has been strongly disputed by the defendants. A perusal of the said document reflects plaintiff to be the owner and in possession of the suit property. It also records that the defendant no.1 had decided to sell the suit property and to divide the sale proceeds equally between the parties herein. Prima facie the document on which the

plaintiff is relying does not show the plaintiff to be the owner in possession of the suit property. The plaintiff cannot claim a right or share in the suit property on the basis of the photocopy of the family settlement. The alleged family settlement is an unregistered document. There is nothing on record to suggest that the suit property is an ancestral property. The judgment - Rajender Mohan Rana (supra) relied upon by Id. Counsel for the plaintiff is not applicable to the facts of the present case. There is neither prima facie case in favour of the plaintiff nor the balance of convenience lies in his favour. The application u/o 39 Rule 1 & 2 CPC has no merit. Hence, the same is dismissed. However, nothing in this order shall tantamount to an opinion on the merits of the case”.

What is evident from the aforesaid reasoning is that the Family Settlement on the basis of which the appellant claims his own right in the property is rejected by the father as being forged. The father claims to be the sole owner of the property; the so-called Family Settlement is without consideration, it could at best be an innocent expression of desire; assuming that the forged document is a Family Settlement, it is not in the form of a contract, therefore, no rights can flow to the appellant; that since the father is the absolute owner of the property, he can dispose it off as he wishes.

At this stage, the learned counsel for the appellant states, upon instructions from the appellant, who is present in Court, that he would like to withdraw the appeal.

The appeal is dismissed as withdrawn.

Nothing stated hereinabove shall be deemed to be an expression on the merits of the case.

NAJMI WAZIRI, J

MAY 23, 2018/RW