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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 567/2018 & IA No.15292/2018 (of the plaintiff u/O XXXIX R-1&2 CPC).

MONIKA HURT

..... Plaintiff

Through: Mr. S. Mukerjee, Mr. R.K. Joshi, Mr. S. Joshi and Mr. Bhagwat Prasad, Advs.

versus

SMITA ARORA AND ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.11.2018

1. This suit came up first before this Court on 2nd November, 2018, order of which date records that the plaint in the suit as filed was incomprehensible and seemed to be copy pasted from some other document. Listing of the suit itself was subject to office objection as to valuation and deficiency in court fees. On request of the counsel for the plaintiff that an opportunity be given for filing a fresh plaint, the suit was adjourned to today.
2. Today, the counsel for the plaintiff states that he has filed a fresh plaint dated 16th November, 2018.
3. The same is taken on record and has been perused.
4. The plaintiff, in the plaint has sought the following reliefs:-

“(a) Grant a decree for declaration that the Will dated 23.02.90, executed by Late Sh. R.P. Arora, in favour of daughters Ms. Raksha Arora (Late) & Ms. Sneh Prabha, and brother Kanwal Kishore Manchanda, is null and void and of no effect and also incompetent;

- (b) *Declare that Plaintiff and Defendants nos.5&6, are entitled to maintain the existing mutation in the records of the DDA of their share of the residential house at Tagore Garden; and to get mutated their 40% share of the factory at Mayapuri;*
- (c) *Decree of mandatory injunction for directing the cancellation of the registration of the said impugned Will dated 23.02.1990 with the office of sub-registrar-II Basai Darapur;*
- (d) *Mandatory injunction directing the said impugned Will and any 'conveyance deed' dated 19-05-1998, pursuant thereto to be delivered up to this Hon'ble court, for being destroyed so as to render same incapable of any further mis-use;*
- (e) *Permanent injunction restraining the defendants 1-4 from claiming any rights to the above two properties B-87, Mayapuri Industrial Area Phase 1, New Delhi; and BF-27 Tagore Garden, New Delhi, either under the Will dated 23-02-1990, or any illegal conveyance deed dated 19.05.1998;*
- (f) *Directing the defendants 1-4 to maintain status qua in respect of the suit properties; and*

AND

- (g) *Pass any other orders as deemed appropriate by this Hon'ble Court."*

5. I have enquired from the counsel for the plaintiff, who is in possession of two properties i.e. property no.B-87, Mayapuri Industrial Area Phase-I, New Delhi and BF-27, Tagore Garden, New Delhi subject matter of the Will qua which reliefs are claimed.

6. The counsel for the plaintiff states that the plaintiff as well as defendant no.1 are in possession of different portions of the properties.

7. I have further enquired from the counsel for the plaintiff, whether the plaintiff, who claims rights in the property, is desirous of seeking the relief of partition.

8. The counsel for the plaintiff states, (i) that there was earlier a suit for partition in which the plaintiff as well as her mother Kiran Arora were parties, besides other parties thereto; (ii) that the said suit was compromised by the mother of the plaintiff, purportedly on behalf of the plaintiff also who was then a minor, and ultimately a compromise decree was passed; and, (iii) the plaintiff has applied for setting aside of the said compromise decree also and which proceedings are pending.

9. Finding the primary relief claimed in the suit to be of declaration qua a Will, I have enquired from the counsel for the plaintiff, whether the Will has been propounded in any legal proceedings and/or any probate has been granted thereof.

10. The counsel for the plaintiff replies in the negative but states that the defendant no.1, on the basis of the Will, obtained mutation in her name but which mutation, on objection being filed by the plaintiff, has been cancelled/withdrawn. It is also stated that this suit has been filed in pursuance to the minutes of the meeting held on 27th November, 2017 of the officials of the Delhi Development Authority (DDA) in respect of property no.B-87, Rewari Lines Industrial Area, Mayapuri, New Delhi, copies of which minutes are filed at pages 388 to 393 of Part-III file, whereby the mutation was cancelled and it was observed that the parties may approach competent court of law for deciding the ownership of property.

11. Merely because the officials of the DDA in their minutes have

observed so, does not make the suit if otherwise not properly constituted, maintainable.

12. A document as a Will, is to be challenged as and when propounded. The case of the plaintiff in fact is that the testator of the Will was not entitled to execute the Will with respect to the properties aforesaid since he was not the exclusive owner thereof and the predecessor of the plaintiff, along with the testator, was the owner of one of the properties mentioned in the Will. With respect to the other property, it is stated that the predecessor of the plaintiff, along with somebody else, was the owner thereof and the testator had no rights with respect to that property.

13. As of today, the defendant no.1, according to the plaintiff, save for earlier having obtained mutation, is not claiming any rights adversely to the plaintiff on the basis of the Will aforesaid. It is thus felt that there is no cause of action for the plaintiff to seek a negative declaration with respect to the Will. The plaintiff has not sought declaration of ownership. The suit is a device to get over the decree for partition, proceedings for setting aside whereof are pending and is thus not maintainable in law.

14. Having held so, I am for the time being not entering into the controversy with respect to valuation of the suit and the requirement if any to pay *ad valorem* court fees thereon.

15. Resultantly, the plaint is rejected.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 22, 2018

‘pp’..
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