

\$~20 & 21

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

+ **CS(OS) 622/2018**

PARDEEP THAPAR

..... Plaintiff

Through: Mr. Rakesh Kumar, Mr. Sahil Gupta
and Mr. Hetish Raj Singh, Advs.

Versus

PARVEEN THAPAR & ORS.

..... Defendants

Through: None.

AND

CS(OS) 623/2018

PARDEEP THAPAR

..... Plaintiff

Through: Mr. Rakesh Kumar, Mr. Sahil Gupta
and Mr. Hetish Raj Singh, Advs.

Versus

PARVEEN THAPAR & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

04.12.2018

**IA No.16569/2018 in CS(OS) No.622/2018 & IA No.16573/2018 in
CS(OS) No.623/2018 (both for exemption)**

1. Allowed, subject to just exceptions.

2. The applications are disposed of.

**CS(OS) No.622/2018 & IA No.16568/2018 (u/O XXXIX R-1&2 CPC) &
CS(OS) No.623/2018 & IA No.16572/2018 (u/O XXXIX R-1&2 CPC)**

3. The plaintiff has instituted these suits against his stepmother, brothers,
sister and stepbrother.

4. CS(OS) No.622/2018 is for the relief of partition and CS(OS)
No.623/2018 is for the relief of declaration as null and void of the
CS(OS) 622/2018 & CS(OS) 623/2018

Relinquishment Deed dated 16th October, 2006 admittedly executed by the plaintiff in favour of the defendant No.1 and for declaration that the plaintiff and the defendants no.1 to 4 are the independent equal owners of property no.3/28, Ramesh Nagar, New Delhi-110015 admittedly held in the name of the defendant No.1.

5. The plaint in both the suits is confusing and no clarity emerges therefrom. However, the counsel for the plaintiff clarifies that CS(OS) No.622/2018 is for partition of only i) 31/1A, Lane No.3, Anand Parbat Industrial Area, New Delhi; and, ii) Plot no.D-8, 31Q/1, M-14, Street No.2, Anand Parbat Industrial Area, New Delhi and is not concerned with any of the other properties mentioned in the plaint. It is stated, (i) that the said two properties belonged to the father of the plaintiff and the defendants No.2 to 4 and who was the husband of the defendant No.1; and, (ii) that the said father died intestate and on his demise, the plaintiff and the defendants no.1 to 4 have 1/5th interest each therein.

6. The plaintiff has paid fixed court fee on CS(OS) No.622/2018 and the suit is listed subject to office objection as to court fee, with the Registry being of the opinion that *ad valorem* court fee is payable. The plaintiff, in the plaint, besides the relief of partition, has also claimed the relief of recovery of *mesne* profits, stating that he has been excluded from the properties of which partition is sought. Once, the plaintiff has been excluded and is claiming *mesne* profits, the plaintiff has to pay *ad valorem* court fee on the claim for partition and cannot on the one hand claim to be in possession and avoid payment of court fee and on the other hand claim *mesne* profits.

7. Not only so, the plaintiff, with respect to the said two properties, in para 17 has pleaded that B.K. Gears Pvt. Ltd. was having five running units, details of which are given in the said paragraph and which details also mentioned the two properties of which partition is sought. If the plaintiff claims the said two properties to be units of B.K. Gears Pvt. Ltd., then this suit for partition of the said properties would not be maintainable and the remedy, if any of the plaintiff would be before the National Company Law Tribunal (NCLT), where the proceedings are stated to be already pending.

8. The counsel for the plaintiff however states that the ownership of the property was of the father but the father had permitted B.K. Gears Pvt. Ltd. to use the said properties.

9. The same is however not pleaded. Moreover, if the properties are in occupation of B.K. Gears Pvt. Ltd., then the claim, if any of the plaintiff for *mesne* profits, would have been against B.K. Gears Pvt. Ltd. which has not been impleaded as defendant in CS(OS) No.622/2018.

10. In CS(OS) No.623/2018, the plaintiff seeks declaration as null and void of the relinquishment deed admittedly executed by him on the plea that the said relinquishment deed was executed on the premise that the defendant No.1 would distribute the properties equally and which the defendant No.1 has not done. This fact is admittedly not mentioned in the relinquishment deed. The relinquishment deed is registered and no evidence contrary to the terms thereof can be led. It is thus not understandable on what basis, the relief of declaration as null and void of the relinquishment deed has been sought.

11. The plaintiff in CS(OS) No.623/2018 seeks a declaration qua three other properties, admittedly held in the name of the defendant No.1, as
CS(OS) 622/2018 & CS(OS) 623/2018

equally belonging to the plaintiff and the defendants. The said claim of the plaintiff would be hit by the Benami Transactions (Prohibition) Act, 1988 and at least from the pleadings, it is not clear how the claim of the plaintiff falls in the exceptions available under the said Act. Without the plaintiff succeeding in the said declaration, the plaintiff cannot possibly have a claim for partition of the said property, as has also been made in CS(OS) No.623/2018.

12. The plaintiff, in CS(OS) No.623/2018 has also sought relief with respect to machinery and moveable assets in the properties which are described as units of B.K. Gears Pvt. Ltd. and which B.K. Gears Pvt. Ltd. has again not been made a party.

13. Though the plaintiff has filed two separate suits but the pleadings therein are interlinked. The commonality in the two suits is evident from para 28 of the plaint in CS(OS) No.622/2018 and there would be a corresponding paragraph in CS(OS) No.623/2018 as well. It thus appears that entertaining two separate suits, even if found to be maintainable, would lead to complexity and delay, rather than expedite the trial in either of them.

14. The counsel for the plaintiff seeks to withdraw the suits with liberty to file afresh.

15. The suits are dismissed as withdrawn with liberty aforesaid but on the condition that the plaintiff, along with the fresh suits, if any filed, files a copy of the plaint in the suits as well as a copy of this order.

RAJIV SAHAI ENDLAW, J.

DECEMBER 04, 2018

‘bs’..

CS(OS) 622/2018 & CS(OS) 623/2018

Page 4 of 4