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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 607/2018 & IA No.16155/2018 (u/O XXXIX R-1&2 CPC).
JAI NARAIN GARG Plaintiff

Through: Mr. Ajay Veer Singh, Adv.

versus

RADHA KRISHAN & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.11.2018**

IA No.16156/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(OS) 607/2018 & IA No.16155/2018 (u/O XXXIX R-1&2 CPC).

3. The plaintiff has instituted this suit for partition of (i) property no. 106, 107 & 108, Krishna Gali, Paharganj, New Delhi; and, (ii) property no.12,13, 14 & 15, Main Bazar, Paharganj, Delhi.

4. With respect to property no.106, 107 & 108, Krishna Gali, Paharganj, New Delhi, it is stated that the same is ancestral property. However there is no document whatsoever to substantiate so. It is not even stated in whose name the property stands today and/or in whose name the property tax, electricity, water and other bills of the property are. The counsel for the plaintiff however on enquiry states that the said property stands in the name of Bhagirath Mal, father of the plaintiff and who inherited the same from his own father Shyam Lal. The plaintiff admittedly has at least one brother and one sister and who have not been made parties to the suit. If the property is ancestral, the said brother and sister of the plaintiff would also have a share

therein and the suit for partition, filed without impleading all the parties who would have a share, is not maintainable. Similarly, it is not disclosed who all were the heirs of Shyam Lal and Bhagirath Mal, inasmuch as all the said heirs would have a share in the property. The suit is directed only against two sons of Kripa Narayan, elder son of Bhagirath Mal. The plaint, vis-à-vis the said property does not disclose a cause of action for the suit to be entertained.

5. Similarly, with respect to property No.12, 13, 14, &15, Main Bazar, Paharganj, Delhi, it is admitted that the said property was purchased in the name of Kripa Narayan i.e. the predecessor of the two defendants. There is not a plea in the plaint as to how, if it was in the name of Kripa Narayan, the plaintiff, who claims to be the son of brother of Kripa Narayan, has a share therein. Without the plaintiff pleading so, the plaint does not disclose a cause of action for partition of the said property also. Though it is pleaded that the firm Bhagirath Mal Kripa Narayan purchased the said property but there is nothing to show that the property was purchased with the monies of the firm or was being treated as property of the firm or what happened to the firm, who all were its partners and whether the firm still continues or has been dissolved.

6. On all the aforesaid being put to the counsel for the plaintiff, he states that he also realised the said problems.

7. Without the legal effect being given to the problems, the suit could not have been filed in this Court.

8. The suit has been filed with a fixed court fees of Rs.20/- only, claiming the plaintiff to be in possession but the averments in the said regard

also are blissfully vague.

9. Such complaints cannot be entertained and if entertained, only burden the Court with the plaintiff himself not knowing how to proceed with the suit.

10. The counsel for the plaintiff seeks two weeks' time.

11. Once the plaint has been filed and is not found to be disclosing cause of action, this Court has no option but to reject the same.

12. I am refraining from imposing any costs on the plaintiff but on the condition that the plaintiff, if institutes any other proceeding with respect to the aforesaid two properties, places this order along with that proceeding.

13. The plaint is accordingly rejected.

RAJIV SAHAI ENDLAW, J

NOVEMBER 28, 2018

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