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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 1472/2017
SURENDER PASSI Petitioner
Through: Mr. Mobin Akhtar, Adv.

versus

SUMAN LATA PASSI & ORS Respondent
Through: Mr. YS Chauhan, Adv. for R-1 to 7.
None for R-8.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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26.07.2018

The respondent no.8 arrayed on record is a proforma party.

Submissions have been made on behalf of either side.

Vide the present petition, the petitioner assails the impugned order dated 20.11.2017 of the Court of the Civil Judge, South-East, Saket Courts in CS No.50964/16 whereby an application under Order 12 Rule 6 of the CPC filed on behalf of the plaintiff to the said suit in view of the submissions in the written statement of the defendant nos. 1 & 2 was declined it having been observed to the effect that the defendants have raised objections which go to the root of the case and it would not be appropriate to exercise discretion under Order 12 Rule 6 of the CPC.

The plaintiff i.e. the present petitioner instituted the suit against the defendant for relief of declaration qua the relinquishment deed registered in the office of the Sub-Registrar i.e. the respondent no.8 to the present petition arrayed as defendant no.8 to the said suit submitting that the same was

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prepared on the basis of a forged will, claimed to have been executed by Ms. Gomti Devi and also on the basis of a gift deed which is also stated to be registered in the office of the defendant no.8 i.e. the respondent no.8 to the present petition and on the basis of a forged will allegedly executed by Shri Mohan Passi stated to be brother of the petitioner submitting to the effect that the same be declared null and void with a restraint against the defendant nos. 1, 2, 5, 6 & 7 from creating third party interest over properties bearing no.1/81 and 1/83, Nehru Nagar, New Delhi on the strength of and claims based on the relinquishment deed dated 26.07.2012 and gift deed dated 13.12.2012.

It has been submitted on behalf of the plaintiff i.e. the petitioner herein that in the written statement of the defendant nos. 1 & 2 there are submissions in relation to typographical error and reliance is placed on behalf of the petitioner on para 5 & 6 of the written statement of the defendant nos. 1 & 2 which reads to the effect that:

"That the contents of para 5-6 of the plaint are wrong and denied. It is submitted that some clerical mistakes were occurred due to some communication gap between the Defendant Nos. 1, 2, 5, 6 & 7 and the document writer in the relinquishment deed dated 26.07.2012, however, those mistakes are now already rectified through the rectification deed. Even otherwise those mistakes do not go to the root of the matter as the very basis of the relinquishment deed dated 26.07.2012 was a Will duly registered in the office of sub-registrar dated 21.11.2007 in favour of Defendant Nos. 1, 2, 5, 6 & 7 executed by Smt. Gomati Devi W/o Late Shri Durga Prasad Passi who was real and absolute owner of the suit property bearing No.1/83, Nehru Nagar, New Delhi-110065. It is, therefore, submitted that the above said mistakes occurred inadvertently in

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the relinquishment deed dated 26.07.2012 are of no relevance."

Without any observations on the merits or demerits of the case, it having been observed that in the said para 5-6 of the written statement of the defendant nos. 1 & 2, they have reiterated specifically to the effect qua the registration of the Will dated 26.07.2012 in favour of the defendant Nos.1, 2, 5, 6 & 7 executed by Smt. Gomti Devi which is stated to be registered in the office of Sub-Registrar, taking the same into account despite submissions made on behalf of the petitioner that in the relinquishment deed which is also based on the forged will, the name of the petitioner is not mentioned in the same as being a legal heir of Smt. Gomti Devi, the mother of the petitioner and also the mother of the defendant nos.1 & 2 inasmuch as the aspect of creating a forged Will or otherwise is yet to be adjudicated, it has thus rightly been observed by the learned trial Court vide the impugned order that there are no unequivocal admissions made on behalf of the defendant nos. 1 & 2 which can assist the petitioner i.e. the plaintiff for grant of a decree under Order 12 Rule 6 of the CPC.

The petition C.R.P. 1472/2017 is thus declined.

Nothing stated hereinabove shall however amount to an expression on the merits of the case.

Copy of this order be sent to the learned trial Court.

ANU MALHOTRA, J

JULY 26, 2018

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