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

+ CS(OS) 1/2016

SANJAY GOEL

..... Plaintiff

Through: Mr. S.S.Jauhar, Adv.

versus

SUNITA CHAUDHARY & ORS

..... Defendants

Through: None for D-1.

Ms. Manjula Gandhi with

Mr. Shivanshu Kumar, Mr. Aditya Kapoor,

Mr. Namit Suri & Ms. Medha Tandon,

Advs. for D-2 & 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.04.2018

IA No.14949/2017(filed by counsel for D-1/ Sunita Chaudhary for discharge)

1. Neither the counsel who is seeking discharge appears nor any other counsel appears for defendant no.1. The application is allowed. The counsel for defendant no.1 is discharged. Since none appears for defendant no.1, the defendant no.1 is proceeded *ex parte*.

CS(OS) 1/2016

2. The plaintiff has instituted this suit for declaration of the Sale Deed dated 4th December, 2012 executed by defendant no.1 Sunita Chaudhary in favour of defendants no. 2 and 3 viz. Sanjay Aggarwal and Meenu Aggarwal as nullity *non est* and invalid.

CS(OS) 1/2016

Page 1 of 3

3. Applications of the plaintiff under Order XXXIX Rule 1 & 2 CPC and of the defendants no. 2 & 3 under Order VII Rule 11 CPC and under Order XXXIX Rule 4 of the CPC are pending consideration.

4. The Counsel for the plaintiff first states that this suit be consolidated with CS(OS) 153/2014 of this Court.

5. However, upon being told that the question of consolidation will be considered only if any need therefor is felt and upon being asked what is the locus of the plaintiff to have the Sale Deed declared nullity, the counsel for the plaintiff states that the property was mortgaged by the defendant no.1 with the plaintiff and CS(OS) No.153/2014 has been filed for recovery of the amounts secured by mortgage.

6. Even if that be so, that does not still show any locus in the plaintiff to have the Sale Deed set aside. If the plaintiff succeeds in CS(OS) No.153/2014, he will have the right as a mortgagee and will be entitled to enforce the same in that suit and has no locus to maintain this suit.

7. The counsel for the plaintiff then states that the plaintiff was in possession of the property and of which possession the plaintiff has been deprived of in execution of a collusive arbitral award between the defendants *inter se*.

8. Even if that be so, the said question will have to be adjudicated either in the Court whose decree in terms of arbitral award was executed or in the suit for recovery filed by the plaintiff.

9. The counsel for the plaintiff then withdraws this suit to pursue appropriate remedies including the remedies already invoked.
10. Dismissed as withdrawn with liberty aforesaid in accordance with law.

RAJIV SAHAI ENDLAW, J

APRIL 02, 2018
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