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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1228 OF 2016

IN

SUIT NO. 3598 OF 1996

Harish Loyalka & Anr

...Plaintiffs

Versus

Dileep Nevatia & Ors

...Defendants

NOTICE OF MOTION NO. 1696 OF 2016

IN

COUNTER CLAIM NO. 10 OF 2016

IN

SUIT NO. 3598 OF 1996

Dileep Nevatia & Ors

...Plaintiffs

Versus

Harish Loyalka & Anr

...Defendants

Ms Neeta Jain, with Avinash Joshi & Kunal Kripalani, i/b Mulla & Mulla CB & C, for the Plaintiffs.

Mr Dileep Nevatia, Defendant No. 1 in Suit & Plaintiff No. 1 in Counter Claim, in person/Applicant.

Ms Preeti Shah, for Defendant No. 4.

Ms Pallavi Bali, with Anju Singh, i/b Bali Associates, for Defendant No. 5.

CORAM: G.S. PATEL, J

DATED: 26th February 2019

PC:-

1. This order will dispose of Notice of Motion No. 1228 of 2016 in Suit No. 3598 of 1996 and Notice of Motion No. 1696 of 2016 in Counter Claim No. 10 of 2016. The Applicant in both is Mr Dileep Nevatia, Plaintiff No. 1 to the Counter Claim and the 1st Defendant to the Suit.

2. Both Notices of Motion apparently proceed on what Mr Nevatia describes—I think somewhat generously, or even ambitiously—as an ‘admission’, sufficient to warrant a judgment under Order XII Rule 6 of the Code of Civil Procedure 1908 (“CPC”). In his Notice of Motion in the suit he seeks that prayers (c) and (d) of the plaint be rejected. These are prayers by which the original Plaintiff, his mother, sought a mandatory injunction restraining Mr Nevatia and his wife to vacate a portion of the residential premises at Worli described in Exhibit “A” to the plaint, and then for a permanent injunction restraining them from entering into or continuing in possession of those premises. The corresponding prayers in Notice of Motion No. 1696 of 2016 in Mr Nevatia’s Counter Claim are of course for a decree in terms of the very many prayers in that Counter Claim but extend also to prayers for damages, mesne profits and so on.

3. The so-called admission canvassed in support of both the applications is actually a statement attributed to the original Plaintiff and noted in an order dated 29th June 1998. That order in paragraph 8 refers to a document signed by the original Plaintiff re-asserting or re-affirming her undertaking that Mr Nevatia and his family would

be the original Plaintiff's successor after her lifetime. In fairness, Mr Nevatia has extracted more than this. The paragraph also says that then there was no imminent threat to the right of the Defendants to claim the property after the Plaintiff's demise, but while she was alive Mr Nevatia could not be allowed to assert his rights in respect of the second floor and also demand a right to be able to use the ground and first floor of the premises. Now Exhibit "A" to the plaint describes the property as a ground plus two storey bungalow on land at Worli Sea Face. In the second portion of that schedule is a more particularized description of each floor of the bungalow. Prayers (c) and (d) of the plaint were, therefore, directed towards the entirety of that bungalow.

4. After the original Plaintiff died, her executors were impleaded, propounding what they claim was her last Will and Testament. This is the subject matter of a separate and independent proceeding.

5. It is difficult from this to conclude, as Mr Nevatia would have me do, that there is "an admission" as contemplated in law sufficient to serve as the foundation of a judgment for the purpose of Order XII Rule 6 of the CPC. The law in this regard is well settled. The admission may be in a pleading or outside it, but it must be unequivocal and in must be unambiguous. The assertion of the Plaintiff was that she signed the family agreement at a time when she was not in a proper frame of mind, and later cancelled it. It is on this evidence has been led by both sides. The law is equally settled that an admission unless explained furnishes best evidence. If, therefore, there is an explanation in the evidence, this will have to be

tested for sufficiency. All these aspects cannot be bypassed or short-circuited on the basis of a statement noted by the Court.

6. This statement was one that was noted more than a decade ago on 29th June 1998. In the time that followed, a counter claim has been filed, parties have gone to trial, evidence has been led, there have been amendments and the original Plaintiff in fact passed away. It seems to me that it would be most inequitable and quite possibly beyond any mandate of the law to now allow these applications at this very late stage when we find ourselves virtually at the final disposal of the Suit and the counter Claim.

7. Indeed, on any fair reading of the Motions themselves, there is no 'admission' at all. To constitute an admission, there must be an unequivocal acceptance of the other party's claim, in whole or in part, in the *lis*. The statement attributed to the Plaintiff is nothing of the sort; and if it is being suggested that by that statement, the original Plaintiff agreed to never make a Will excluding Mr Nevatia, then that is entirely incorrect and untenable (assuming there is such an exclusion). This statement cannot constitute an abandonment of the original Plaintiff's claim regarding the Family Arrangement or its later cancellation.

8. Both Notices of Motion are dismissed with these observations. There will, however, be no order as to costs.

(G. S. PATEL, J)