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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 63/2019 & IA No.1557/2019 (u/O XXXIX R-1&2 CPC).**
UMA GUPTA & ORS. Plaintiffs
Through: Mr. Ravi Kapoor, Ms. Sonakshi
Singh and Mr. Rommel Khan, Advs.
versus
INDU GUPTA & ORS. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.02.2019**

IA No.1558/2019 (for exemption).

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

CS(OS) 63/2019 & IA No.1557/2019 (u/O XXXIX R-1&2 CPC).

3. The four plaintiffs have sued the five defendants for partition of property no.B-33, Pushpanjali, Vikas Marg Extension, Delhi – 110 092 comprising of ground floor, *mezzanine* floor, first floor and *barsati* with terrace above the first floor. It is the case of the plaintiffs that the said property belonged to the father-in-law of the plaintiff no.1 and paternal grandfather of the plaintiffs no.2 to 4, who died leaving the plaintiffs and the defendants no.1 to 5 as his natural heirs.

4. The plaintiffs, in the plaint itself have pleaded that upon the plaintiffs expressing desire for partition of the property, the defendant no.5 Dr. Anil Kumar Gupta has set-up a registered Will of the common predecessor, whereunder the ground floor is bequeathed to defendants no.1 to 4, *mezzanine* floor and first floor to the plaintiffs and open terrace and *barsati*

floor to the defendant no.5.

5. Once the common predecessor of the parties has left a Will whereunder separate portions of the property have been bequeathed to the parties to the suit, this suit for partition is misconceived.

6. The counsel for the plaintiffs states that this suit has been filed because the stand of the defendants no.1 to 4 vis-à-vis Will set-up by the defendant no.5 is not known, even though under the Will set-up by the defendant no.5 the plaintiffs have lions share of the property.

7. Merely because the stand of the defendants no.1 to 4 vis-à-vis the Will set-up by the defendant no.5 is not known, would not entitle the plaintiffs to seek partition when there is no joint property and what is claimed in the plaint is inheritance under the Will, of separate divisible portions of the property.

8. The plaintiffs in the plaint have not whispered that the plaintiffs themselves are disputing the Will or not accepting the Will set-up by the defendant no.5. If the plaintiffs themselves have accepted the Will, then as per the Will, there is no joint property to be partitioned, for partition of which this suit would lie.

9. The plaint thus, on the averments contained therein does not disclose any cause of action and is rejected.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 01, 2019

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