

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

% *Date of decision: 8th February, 2019*

+ **FAO(OS) 29/2019 & CM. Nos. 5991/2019 and 5992/2019**

SUDESH LAMBA & ORS

Through: **Mr. Hemant Bassi, Adv. with
Mr. Rohit Gandhi, Adv.** Appellant

versus

MANJU CHOUDHARY & ORS

Through: Respondents

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

V. KAMESWAR RAO, J. (ORAL)

CM. No. 5992/2019

Exemption allowed subject to all just exceptions.

Application stands disposed of.

FAO(OS) 29/2019

1. The present appeal has been filed by the appellant challenging the order dated November 22, 2018 passed in IA No.15876/2018, which was an application under Order 7 Rule 11 of the CPC whereby the said application was dismissed by the learned Single Judge.

2. Mr. Bassi, learned counsel for the appellant would make two submissions; (i) that the suit filed by the plaintiff respondent No.1 was barred under law in the light of the previous judicial proceedings between her and her late father Sh. Gian Singh Choudhary whereby a compromise was arrived at whereunder the plaintiff respondent No.1 had admitted her father to be the sole and absolute owner of the property bearing No. 217, Jor Bagh, New Delhi and further agreed not to raise any claim whatsoever, present and future in respect of any of the properties moveable and immovable of late Sh. Gian Singh Choudhary against the receipt of Rs.45 lakhs from him, which was duly received by her. The plaintiff respondent No.1 has played fraud upon the Court, inasmuch as deliberately concealed the previous litigation between her and her late father Sh. Gian Singh Choudhary and the compromise arrived at therein; (2) that the plaintiff / respondent No.1 has valued the suit separately for the jurisdiction of Court fee while she had valued the suit at Rs.4 Crores towards her share for the purpose of Court fee, she valued the suit at Rs.200. According to him, it is a settled position of law that suit cannot be valued separately for the purpose of jurisdiction and Court fee. Further, admittedly plaintiff respondent No.1 is not in actual physical

possession of the suit property. She has failed to pay the ad-valorem Court fee on the aforesaid valuation of Rs.4 Crores and has filed the suit by merely paying the fixed Court fee.

3. Insofar as the first submission is concerned, we are not impressed by the submission made by Mr. Bassi, inasmuch as the learned Single Judge has dismissed the same by holding as under:-

“2. That would however not disentitle the plaintiff from now, on the demise of the father, claiming a share in the property.

3. As far as the pleas of the father having transacted with the property in his lifetime are concerned, the same cannot be a ground for rejection of the plaint.”

4. On the concealment, the learned Single Judge has in para 7 held as under:

*“7. As per the dicta of Supreme Court in **Iqbal Singh Marwah vs. Meenakshi Marwah** (2005) 4 SCC 370 and of this Court in **Vishal Kapoor vs. Sonal Kapoor** 2014 SCC OnLine Del 4484 and **Punjab Tractors Limited vs. International Tractors Limited** (2010) II ILR 352, an application under Section 340 of the Code of Criminal Procedure, 1973 (Cr.PC) does not lie at this state. Accordingly, IA No.47757/2018 also is misconceived and is disposed of with liberty to the applicants / defendants to, at the appropriate state, in terms of the said judgment, apply.”*

We agree with the aforesaid conclusion.

5. Insofar as the submission No.2 is concerned, Mr. Bassi concedes that there is no finding of the learned Single Judge in that regard. If that be so, liberty is with the appellant herein to seek such remedy as available in accordance with law.

6. The appeal is disposed of in terms of the above.

CM. No. 5991/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 08, 2019/ak