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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 181/2019 & IA No.4720/2019 (u/O XXXIX R-1&2 CPC)**
SADHNA AGGARWAL Plaintiff

Through: Mr. Suryakant Singla with
Ms. Rimjhim Naudiyal, Advs.

versus

RAKESH AGGARWAL Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.04.2019**

1. On 1st April, 2019, when the suit first came up before this Court, the following order was passed.:

“3. *The plaintiff has sued her husband for cancellation of the partition deed dated 1st June, 2016 executed by the plaintiff and her husband with respect to an immovable property owned by both of them.*

4. *The only ground for cancellation is that the husband of the plaintiff has not paid to the plaintiff the owelty which he had agreed to pay under the partition deed.*

5. *I have enquired from the counsel for the plaintiff, under which law the plaintiff is entitled to the said relief of cancellation.*

6. *The counsel for the plaintiff invites attention to Section 31 of the Specific Relief Act, 1963.*

7. *However, on further enquiry as to under what ground is the deed voidable at the instance of the plaintiff, the counsel for the plaintiff seeks adjournment.*

8. *List on 3rd April, 2019.”*

2. Though the counsel for the plaintiff was heard yesterday but could not convince this Court about the maintainability of the suit, especially in the
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light of the principles contained in Section 55(4) of the Transfer of Property Act, 1882 and language of the partition deed.

3. Instead of dismissing the suit, owing to the plaintiff having paid substantial court fees, option was given to the counsel for the plaintiff yesterday to withdraw the suit and the counsel for the plaintiff had sought time till today to obtain instructions.

4. The counsel for the plaintiff today states that he has instructions to withdraw the suit and seeks refund of court fees.

5. The suit is dismissed as withdrawn.

6. Out of the court fees paid by the plaintiff, a certificate entitling the plaintiff to refund of the court fees less Rs.20,000/- be issued and handed over to the counsel for the plaintiff.

7. I may mention, that there are no averments in the plaint of any disputes between the plaintiff and defendant who are husband and wife. It is however the averment of the plaintiff, that her husband i.e. the defendant, is in debt. This suit, *prima facie* was intended to defeat the claims of the creditors of the husband of the plaintiff and in collusion with the defendant and to save property no.10D, Under Hill Road, Civil Lines, Delhi – 110 054, subject matter hereof. It is apprehended that the parties after failing in this attempt may seek same/similar relief in another forum. This order is therefor released on website of this Court so as to be accessible to all concerned.

RAJIV SAHAI ENDLAW, J

APRIL 04, 2019

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