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

Date of Decision: 26.04.2019

\+ FAO(OS) 84/2019

VIJAY SHANKAR AGGARWAL ..... Appellant
Through: Mr.Bharat Gupta with Mr.Vishesh Chauhan, Advs.

versus

SUNITA AGGARWAL & ORS ..... Respondents
Through: None.

\+ FAO(OS) 85/2019

VIJAY SHANKAR AGGARWAL ..... Appellant
Through: Mr.Bharat Gupta with Mr.Vishesh Chauhan, Advs.

versus

SUNITA AGGARWAL & ORS ..... Respondents
Through: None.

\+ FAO(OS) 87/2019

VIJAY SHANKAR AGGARWAL ..... Appellant
Through: Mr.Bharat Gupta with Mr.Vishesh Chauhan, Advs.

versus

SUNITA AGGARWAL & ORS ..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

C.M. Nos.19322/2019, 19355/2019 in FAO(OS) 84/2019
C.M. No.19324/2019 in FAO(OS) 85/2019
C.M. No. 19354/2019 in FAO(OS) 87/2019

Exemptions allowed, subject to all just exceptions.

FAO(OS) 84/2019
FAO(OS) 85/2019
FAO(OS) 87/2019

1. The appellant has preferred the present three appeals to assail the order dated 12.03.2019 passed by the learned Single Judge in CS(OS) No.11/2017 as well as in the pending applications, i.e., IA No.349/2017 preferred by the plaintiff/respondent no.1 seeking maintenance of status quo in respect of the suit properties; IA No.12634/2018 preferred by defendant no.4/appellant seeking release of what he claimed to be his share from the amount of Rs.7.5 crores received from the sale of 50% of the property bearing A-12, Lawrence Road, Delhi, and; IA No.12633/2018 by the defendant no.4/appellant under Order 7 Rule 11 CPC for rejection of the plaint.

2. The plaintiffs Sunita Aggarwal and Anju Aggarwal who are impleaded as respondent nos.1 and 2 in the present appeals, have filed the suit to seek declaration/cancellation, partition and injunction against the defendants i.e. their father Shri Tej Ram Aggarwal (defendant no.1) who has been impleaded as respondent no.3, mother Smt.Pushpa Devi/respondent no.4 and also her brothers Shri Vijay Shankar Aggarwal, Shri Ravi Shankar Aggarwal, Shri Shiv Shankar Aggarwal and Shri Prem Shankar Aggarwal i.e. the appellant and the

respondent nos.5 to 7 respectively. In the suit, the plaintiff's claim is that they, along with their parents and brothers, constitute a Hindu Undivided Family (HUF) which owns several properties. This claim regarding the existence of the HUF is premised upon the document executed *inter se* between their father and their brothers wherein the existence of the HUF has been acknowledged.

3. The claim of the plaintiffs is that their father and brothers subsequently entered into a settlement amongst themselves, excluding the plaintiffs therefrom, and decided to appropriate the HUF properties amongst themselves. One of the properties, namely, property no.A-12, Lawrence Road, Delhi has admittedly been disposed of and a part of the sale consideration i.e. Rs.7.5 cores in respect of 50% of the said property has been deposited with the Regsitry, pursuant to the orders passed by this Court.

4. In the aforesaid background, the learned Single Judge has, firstly, directed maintenance of status quo in respect of the properties claimed to be the HUF properties. Secondly, the learned Single Judge has rejected the application of the appellant/defendant no.4 i.e. IA No.12634/2018, (while simultaneously dealing with IA No.10337/2018 preferred by defendant no.3, for similar relief), wherein they sought release of their share out of the amount of Rs.7.5 crores deposited with this Court towards sale consideration of 50% of the property bearing A-12, Lawrence Road, Delhi. The learned Single Judge has observed that the said defendants (brothers of the plaintiffs) in the suit) had admitted that they had already received their share of the sale consideration from the first sale of the 50% share of the

Lawrence Road property and that no part of that amount had been deposited in the Court. Since the plaintiffs had not received any portion thereof, and their rights are yet to be adjudicated in trial in respect of their claims relating to several properties, their share deserves to be safeguarded. Consequently, the learned Single Judge rejected the said application filed *inter alia* by the appellant/defendant no.4.

5. The appellant/defendant no.4 had moved IA No.12633/2018 under Order 7 Rule 11 to seek rejection of the plaint on the ground of non-payment of court fee. This application was rejected by the learned Single Judge on the premise that the appellant had admitted that the plaintiffs used to visit the defendants from time to time and the question as to whether any of the belongings of the plaintiffs are lying in any of the premises in the defendants' possession would have to be established at trial. The learned Single Judge has also recorded the plaintiffs' undertaking that if the court determines that additional court fee would be payable, the same would be deposited by them. Consequently, the said application was rejected.

6. The submission of learned counsel for the appellant, firstly, is that there is no averment in the plaint with regard to the creation or existence of the HUF, apart from a reference to the *inter se* settlement between the father and the brothers of the plaintiffs. He submits that the said document was only executed for tax purposes, and was not acted upon by the parties thereto.

7. The submissions advanced by learned counsel for the appellant may constitute the defence of the appellant and the other defendants.

However, at the initial stage of the suit, when the trial is yet to take place, in our view, the learned Single Judge was entitled to rely upon the settlement entered *into inter se* the father and the brothers of the plaintiffs, wherein they have themselves acknowledged the existence of the HUF and that the suit properties belong to the HUF. In the light of these facts, once the suit is pending trial, the direction for maintenance of status quo cannot be found fault with.

8. We have noticed the reasons given by the learned Single Judge for rejecting the application moved by the defendant no.4/appellant, i.e., IA No.12634/2018, the same being that the plaintiffs have not received any portion of the sale proceeds of 50% share of the said property which was, evidently, sold earlier and the proceeds thereof were pocketed by the defendants. That being the position, the order passed by the learned Single Judge declining the request of the appellant/defendant no.4 for release of what he claimed as his share of the amount of Rs.7.5 crores appears to be completely justified.

9. So far as rejection of IA No. 12633/2018 is concerned, the submission of learned counsel for the appellant is that the plaintiffs have *inter alia* sought restoration of the possession of the immovable property bearing No. A-12, Lawrence Road, Industrial Area, Delhi to the hotchpotch of the common corpus of the HUF properties. They are also staking their claim in the proceeds of the sale of the said property along with interest. That being the position, the plaintiffs should have paid ad valorem court fee on the market value of the property at Lawrence Road on the sale consideration of which they are claiming a share.

10. On this aspect, we do not find any merit in the submission of learned counsel for the appellant. In our view, the learned Single Judge has rightly rejected the application. Firstly, it would have to be found by the learned Single Judge, upon trial, whether the court fee is deficient. Secondly, even if such a finding were to be returned, the plaintiff would be entitled to make up the deficiency in the court fee and only in the event of any failure thereof, the plaint would be liable to be rejected on that account. The learned Single Judge has, while passing the impugned order, recorded the plaintiffs' undertaking that if the Court determines that additional court fee would be payable, the same would be deposited by them. In this background, we do not find any infirmity in the impugned order passed in IA No.12633/2018.

11. For the aforesaid reasons, all the three appeals are dismissed.

VIPIN SANGHI,J

REKHA PALLI, J

APRIL 26, 2019

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