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IN THE HIGH COURT OF DELHI AT NEW DELHI

+IA Nos. 7093-94/2009 & 10546/2009 in CS(OS) NO. 980/2009

Date of Decision : 12.11.2010

**Mrigendra Pritam Vikramsingh
Steiner & Ors.**

..... Plaintiffs

Through: Mr. A. K. Vali & Mr. R. K.
Srivastava, Advs.

Versus

Jaswinder Singh & Ors.

..... Defendants

Through: Mr. A. K. Khosla, Adv.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

IA Nos. 7093-94/2009 & 10546/2009

1. This order shall dispose of three applications bearing IA Nos. 10546/2009 under Order VII Rule 11 (a) CPC filed by the defendant no. 1, IA No. 7093/2009 under Order XXXVIII Rule 5 CPC and IA bearing no. 7094/2009 under Order XL Rule 1 CPC filed by the plaintiffs.

2. Briefly stated the facts of the case are that the plaintiffs are four daughters of Late Shri Rajendra Vikram Singh. The suit was filed for partition of two properties bearing no. B-10, West End, New Delhi and a commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi marked in green in Schedule-I. The Surya Kiran Property was purchased from the defendant no. 6. So far as the property in West End is concerned, it was alleged that it was a joint property of their deceased father Rajendra Vikram Singh and his brother Jaswant Singh (since deceased). The defendant no. 1 Jaswinder Singh is the son of Late Shri Jaswant Singh. The defendant no. 2/Ms. Surinder Kaur is the widow of Jaswant Singh. The defendant nos. 3 and 4 and 5 Jasdeep Kaur, Harpreet Kaur and Hardeep Kaur are the daughters of Late Shri Jaswant Singh. The defendant no. 6 is stated to be Ansal Properties from whom the commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi was purchased. The defendant no. 7 is the tenant in respect of rear half portion of the West End property while as the defendant no. 8 is the tenant in respect of the commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi.
3. It was the case of the plaintiffs that their father was the joint owner of West End property and two separate buildings were constructed

on the said plot. The front portion of the building belonged to Late Shri Jaswant Singh, predecessor-in-interest of defendant nos. 1 to 5 while as the rear portion of the building facing towards the South End side owned by Rajendra Vikram Singh father of the plaintiffs, which is presently under the occupation of a tenant paying rent to the defendant no.1. Similarly, the property Surya Kiran Building is also under tenancy. Though the names of the tenants are given but it is stated that as of date they are not the tenants.

4. It is not in dispute that the father of the plaintiffs who had settled in USA died on **02.01.2001** in India. It is alleged that their father had made an unregistered WILL dated **05.12.2000** and bequeathed all the immovable properties to the plaintiffs and in any case even if the WILL is not taken into consideration the property passed by operation of law and succession as envisaged under Section 8 of the Hindu Succession Act according to which the plaintiffs get the share in the said property. The plaintiff has also stated in the plaint that earlier they had filed a suit bearing no. CS (OS)1207/2001 claiming half ownership of the West End property which was rejected on the ground that the requisite court fees was not paid, and accordingly, the present suit has been filed by the plaintiffs.
5. So far as the defendant no. 1 to 5 are concerned, they have contested the claim of the plaintiffs for partition of the suit

property. The defendant no. 1 has taken the plea that so far as the deceased father of the plaintiffs is concerned as his daughters were settled permanently in USA, he had bequeathed the aforesaid immovable properties vide WILL dated 05.12.2000 in favour of the defendant no. 1, who happen to be the nephew (brother's son) out of natural love and affection. It is alleged by him that the property situated in West End accordingly was got mutated by him in his own name on the basis of the WILL and it has been let out by him to the tenant from whom an amount of Rs.6/7 lakhs or so is being realized per month.

6. So far as the commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi is concerned, it is stated by the defendant no. 1 that this property was also bequeathed by Rajendra Vikram Singh in favour of the defendant no. 1 on the basis of the WILL dated 05.12.2000. Further he had applied to the defendant no. 6 for mutation of the property in his favour which was done by them by making an endorsement on the agreement to sell and thereafter he has got the said agreement to sell further endorsed in favour of his wife and daughters. It is the case of the defendants that no document of title in respect of the commercial property was executed by the defendant no. 6. There was only a letter of allotment/agreement to sell executed in respect of the said property which was got endorsed in pursuance to the

WILL purported to have been made by Rajendra Vikram Singh deceased firstly in favour of the defendant no. 1 and thereafter in favour of the daughters of the defendant no.1 and thus they are the owners of the property.

7. The defendant no. 1 has filed an application under Order VII Rule 11(a) CPC for rejection of the plaint on the number of grounds which are as under:

- (i) It is alleged by the defendant no. 1 that the plaintiffs had earlier filed their case on the basis of the WILL dated **05.12.2000** which was dismissed, and therefore, the said WILL cannot be the basis of filing of the present suit.
- (ii) That the suit has been signed, verified and instituted by one Ms. Baljit Dhillion, mother of the plaintiffs, in her capacity of being the Power of Attorney holder when no such documentary authorization has been placed on record despite a mention in the plaint that it is attached as annexure A in para I of the plaint. A subsidiary argument which was raised is that even if it is assumed that the plaint has been duly signed, verified and instituted by a competent person the verification of the suit cannot be countenanced as it has been stated that averments made in paras 1 to 41 of the plaint are "true and correct to my knowledge" that means they are true and correct to the knowledge of Baljeet Dhillion. It is also alleged that the affidavit in support of the plaint is neither signed nor attested, and therefore, no cognizance of the said affidavit can be taken.
- (iii) The third objection which is taken for the rejection of the plaint is that under Order VII Rule 14 CPC an application seeking exemption from filing the original documents was sought which was granted but no original documents have been filed till date. It is alleged that

although the plaintiffs are purported to be relying on such an oral documents but no such documents have been filed by them despite the fact that after the order dated 25.05.2009 the plaintiffs application bearing no. 7095/2009 under Order VII Rule 14 CPC was allowed and four weeks' time was given to file the original documents.

- (iv) Fourth ground for rejection of the plaint is the suit is bad for mis-joinder of the defendant nos. 2 to 7 and as their impleadment is designed to embarrass the Court with unnecessary and vexatious litigation which has no bearing to the relief claimed by them.
- (v) It is alleged that the plaint propounds the WILL. It is alleged that the defendant no. 2 is the defendant no.1's mother and the defendant nos. 3 to 5 are the sisters of the defendant no. 1, all of whom have never raised a claim with regards to the property and this is in the knowledge of the plaintiffs, and therefore, this is a case of misjoinder of parties.
- (vi) So far as the commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi is concerned, it is alleged that although the suit property was agreed to be sold by defendant No.6 to Late Shri Rajendra Vikram Singh, however, on account of the demise of Rajendra Vikram Singh the said agreement to sell was endorsed in favour of the two daughters Ms. Geetanjalei Singh and Ms. Aishwarya Singh on 03.01.2008 in their favour, and therefore, there was no cause of action for the plaintiffs to file the present suit and the name of the defendant no. 6 be struck off from the array of defendants. Similarly, a prayer with regard to the defendant nos. 7 and 8 for deleting them from the array of defendants has been made.
- (vii) It is alleged that the plaintiffs have approached this Court with unclean hands and material facts with regard to the previous litigation or the

litigation between Late Shri Rajendra Vikram Singh and his wife Baljeet Dhillion has not been revealed in the plaint.

(viii) It is also alleged that the instant suit is barred by provision of 23 Rule 1 CPC in as much as the earlier civil suit bearing No. CS(OS) 1207/2001 was on the same cause of action, as the instant case. The said suit was dismissed vide order dated 12.02.2007 because of non-payment of requisite court fees, and therefore, the present suit is not maintainable. A rejection of the suit is also sought on the ground of limitation and on the ground of under valuation of the suit property in respect of which she has sought the declaration of ownership.

(ix) It is alleged that the plaintiffs have valued the suit property in West End at the rate of **4/5 lacs** per sq. yard while as the actual market value is much higher than that, and therefore, the present suit is liable to be rejected. It is on these grounds the defendant no. 1 has sought rejection of the plaint.

8. The plaintiffs have filed the reply to the application and contested the claim of the defendant no.1 for rejection of the plaint. The dismissal of the suit filed by the plaintiff on the basis of the will does not preclude the filing of the suit on the basis of intestate succession. Therefore there is no application of the principle of res-judicata or the rejection of plaint under Order VII Rule 11. So far as the rejection of the plaint as not having been validly signed, verified or instituted by Baljeet Dhillion, the mother of the plaintiffs is concerned, an application duly supported by an affidavit of one of the plaintiff's has been filed during the hearing of the arguments contending that assuming that there is deficiency with regard to

the authority of Baljeet Dhillon, the mother of the plaintiffs in instituting the suit still the acts of Baljeet Dhillon are being ratified and owned by the plaintiffs. The rejection of the suit of the plaintiffs filed in 2001 on account of lack of payment of court fees does not preclude the filing of a fresh suit provided the cause of action was itself within limitation. So far as the question of limitation is concerned that the question of limitation is a mixed question of law and fact, it can be adjudicated only after the parties are permitted to adduce evidence when an issue in this regard is framed.

9. The other objections with regard to the non-joinder of necessary parties or the defect in verification clause, alleged concealment of facts etc. the learned counsel for the defendant has contended that this is only at best an irregularity or a fact to be established by evidence. It is further stated that the irregularity can be rectified during the course of trial and the plaint cannot be rejected under Order VII Rule 11(a) CPC for the same.
10. The remaining two applications have been filed by the plaintiffs. An application bearing no. 7093/2009 is an application under Order XXXVIII Rule 5 CPC read with section 151 CPC for attachment before the judgment of the portion of the property bearing no. B-10 West End, New Delhi belonging to the defendant No.1 which is marked in Green, Schedule-D to the plaint so that a

decree in respect of the mesne profits which may be passed against the defendant No.1 is executed. The plaintiffs have claimed apart from partition, a sum of Rs.2,10,06,720/- as the mesne profits for the two properties which would have accrued to the plaintiffs. It is stated by the plaintiffs in the plaint and this factum is not disputed by the defendant no. 1 either that South End portion of the B-110 West End, New Delhi has been let out by the defendant no. 1 to a party from whom he is realizing the hefty amount of Rs.6,00,000/- or so per month by way of rentals.

11. This application for attachment before judgment has been resisted by the defendant no. 1 on the ground that the plaintiffs are not entitled to any mesne profit on account of the fact that the deceased father of the plaintiffs had bequeathed his portion of the property in West End in favour of the defendant no. 1 by virtue of a WILL and hence the defendant no. 1 was lawfully entitled to the entire property to West End including the realization of rent.
12. With regard to the second IA bearing no. 7094/2009 the plaintiffs have prayed for an appointment of a receiver in respect of the West End property especially the portion which is under the occupation of a tenant as well as the commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi for efficient management, protection, preservation, improvement and collection of rents and profits from the said property. It was

alleged in the application by the plaintiffs that even in the earlier suit bearing no. CS(OS) 1207/2001 the plaintiffs had filed an IA bearing no. 5699/2001 for deposit of rent of the suit premises tenancies in this Court apart from restraint order whereupon the High Court on 06.06.2001 had restrained the defendants which included the defendant no. 1 also, from transferring, alienating or parting with possession of any of the properties mentioned in para 2 of the said plaint. Further the tenants who were defendant No.2 and 3, in the said case in respect of these properties were directed to deposit the rent in Court. It is contended that the same order deserves to be passed in the present application also in as much as the defendant no. 1 is trying to fritter away the properties and the rentals which are being realized. It is in this context a prayer for appointment of a receiver is made who will not only maintain, preserve the suit properties but also collect the rent and deposit the same in Court.

13. The defendant no. 1 has filed the reply to the said application and the stand which has been taken by him for resisting the attachment before judgment has been taken in reply to the present application also. It has been further stated that so far as the commercial property bearing no. 510, Suryakiran Building, 19, Kasturba Gandhi Marg, New Delhi is concerned, there was an agreement to sell in favour of Late Shri Rajendra Vikram Singh

executed by the defendant no. 6. The said agreement is endorsed in favour of the defendant no. 1 on the basis of the WILL and thereafter the defendant no. 1 has further got the endorsement of the agreement to sell recorded in favour of his two daughters, and therefore, if at all any rent is being realized by them in pursuance to the said endorsement, they being not parties to the suit the receiver in respect of the said property cannot and may not be appointed.

14. It may be pertinent here to refer to the written statement which has been filed by the defendant no. 6/Ansal Properties which has sold the said commercial property vide an agreement to sell in favour of the father of the plaintiffs deceased Rajendra Vikram Singh. The defendant no. 6 has taken the stand that on account of demise of Rajendra Vikram Singh, he being the owner of the said property was well within his right to bequeath the said property in favour of the defendant no. 1. It is also stated by them that on the basis of the WILL dated 05.12.2001 having been produced by the defendant no. 1, they endorsed the agreement to sell in favour of the defendant no. 1 as there was no requirement of law to ask the defendant no. 1 either to file no objection certificate of the legal heirs of Rajendra Vikram Singh or to obtain the probate. It has tried to justify the endorsement by contending that the property is self-acquired property by the deceased Rajendra Vikram Singh and

he was well within his right to alienate the property in favour of the defendant no. 1.

15. I have heard the learned counsel for the parties and perused the record.
16. Mr. Khosla, the learned counsel for the defendant no. 1 has very vehemently and strenuously contended that the suit as framed is liable to be rejected under Order VII Rule 11(a) CPC on account of various contentions and the grounds which has been detailed hereinabove. It was contended by him that the suit has not been validly signed, verified and instituted by a duly authorized person as the document of authorization which is stated to be attached with the plaint as annexure 'A-1' is not attached with the plaint.
17. The suit is purported to have been filed by the plaintiffs through their mother Baljeet Dhillion whose power of attorney is not on record and the affidavit of one of the plaintiff's which has been filed during the course of submissions cannot be taken cognizance so as to regularize the irregularity in filing of the suit and this must result in rejection of plaint. Another subsidiary argument to this plea was that the suit is not properly verified as it has been stated that the contents of paras 1 to 41 are true to her knowledge. It is stated that when the suit is being filed through the power of attorney how it could be said that the contents of the various paras were true to her knowledge.

18. The learned counsel for the defendant has also raised the objection regarding misjoinder of parties on the ground that neither the defendant No.6, who had sold the flat to the deceased nor the tenants in the two properties are neither necessary nor proper parties and therefore the suit is liable to be rejected. It is also contended that despite the time having been given, the plaintiff has not filed the original documents and therefore the plaint be rejected. It is alleged that the suit is liable to be rejected on the ground of concealment of facts.
19. The suit is being barred by limitation and the rejection of the previous suit is canvassed as a ground for rejection under Order VII Rule 11 (d) CPC. The learned counsel has placed reliance on the judgment of the Apex Court in case title **T. Arivandandam Vs. T. V. Satyapal & Anr.** AIR 1977 SC 2421 to contend that a false and vexatious claim must be rejected. The learned counsel has referred to the para 5 of the said judgment in order to support his point regarding rejection of the plaint. The said para reads as under:

“5. that if on a meaningful -- not formal -- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party

searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them.

20. I have carefully considered the submissions made by the learned counsel for the defendant for rejection of the plaint, however, I find myself unable to agree with any of the submissions made by the learned counsel with regard to the rejection of the plaint under Order VII Rule 11(a) CPC and with any of the points which are urged by him in the instant case. Although there is no dispute about the proposition of law which has been laid down by the Apex Court in **Arivandandam's case (Supra)** however the facts of the present case do not merit rejection of plaint as prayed for on the basis of the observation passed in the said judgment.
21. The Order VII Rule 11(a) Reads as under:

“Order VII Rule 11 Rejection of plaint

The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;"

(d) where the suit appears from the statement in the plaint to be barred by any law.

22. A perusal of the aforesaid four clauses show that so far as the first ground for rejection of the plaint is concerned, that is based on the cause of action. This is not the case of the defendant that the plaint does not disclose any cause of action. On the contrary, the grounds which are urged are misjoinder of parties or non filing of the documents despite time having been given by the Court etc. These are no grounds for rejection of plaint summarily under O 7 R 11 CPC. There can be at best an issue framed with regard to misjoinder of parties whereupon parties will be given an opportunity to produce the evidence and decide the said issue. The defendant will have to adduce evidence to show that on account of mis-joinder of parties he has been seriously prejudiced or in the absence of joining of a necessary or a proper party, the Court has not been or will not be able to give the complete relief to the plaintiff, therefore, this cannot be a ground for summoning for rejection of the plaint.
23. Similarly, if the plaintiff has not filed the document despite the time having been given, it will at best make the Court draw an adverse inference against him but can hardly be a ground for rejection of the plaint at this stage. The basic dictum is that one

who asserts must prove. Further, when it comes to proof of documents best evidence has to be produced and in the case of documentary evidence. The document itself is the best evidence unless a party is permitted to produce secondary evidence. If the plaintiff does not do so he does so at its own peril.

24. The clause (b) and (c) as envisaged under Order VII CPC are the grounds where either the suit has been undervalued or even if properly valued but deficient court fees has been paid which is not the case of the defendant.
25. Although the defendant no. 1 has taken the plea that the suit is barred by limitation but he has failed to show as to how the suit is barred by limitation. On the contrary the ground for rejection of the plaint which has been taken by the defendant no.1 is that the plaintiff had earlier filed a suit bearing no. CS (OS) 1207/2001 basing his claim on the WILL purported to have been made by their father and sought possession of the West End property which was rejected on account of the deficient court fees. If a suit is rejected on account of lack of payment of proper court fees or for that matter deficient court fees, the aggrieved party can always pay the deficient court fees and revive the suit or even file a fresh suit as the case may be provided it is within limitation. In the instant case also the plaintiffs have filed the present suit after paying the deficient court fees. In addition even if a party has failed to show

its claim on property on the basis of an alleged Will still it is open to the party to contend that the property passes on to it by ordinary law of succession.

26. The present suit is filed for partition in respect of which the defendants have denied the claim of the plaintiffs and the cause of action is a continuing one and therefore it clearly shows that it is within the period of limitation.
27. The learned counsel for the plaintiffs has put too much reliance on the lack of authority of Baljeet Dhillion the mother of the plaintiff to file the present suit by contending that the requisite power of attorney is not on record. He has also tried to assail the verification clause of the suit by contending that the source of verification is not given and the present plaintiffs who have filed the present suit has simply stated that the averments made in para 1 to 41 are true and correct to her knowledge but wherefrom this knowledge drive has not been given.
28. Omission to verify or defective verification can be regularized at a later stage and if it is a mere irregularity within Section 99 as a defect in verification it has been held in catena of authorities to be curable defect and not a fatal one. Reliance in this regard can be placed on the following authorities **AIR 2001 Rajasthan 211** and **AIR 2002 Allahabad 363**.

29. Further merely by stating that the statement made in this paragraph are true on the basis of information received or belief to be true is sufficient compliance and is not necessary in the verification clause to disclose the grounds or the source of information with regard to the averments which are based on the information received. Reliance in this regard is placed on **AIR 1995 Rajasthan 50**. Similarly, so far as the contention of the learned counsel for the plaintiff with regard to the maintainability of the plaint itself on account of lack of power of attorney is concerned, the said power of attorney is not attached as Annexure-I to the suit this is at best an irregularity which can be cured at any stage of the trial. The plaintiff has chosen to file an affidavit adopting supporting all the acts which have been done by her mother during the hearing of the case. Having chosen to file the said affidavit the Court feels that there was sufficient authority with the mother of the plaintiff of Baljeet Dhillion to file the present suit against the defendant. Therefore, lack of authority, defective verification or even the absence of the affidavit are at alleged irregularities which can be cured during the trial.
30. Moreover, it is settled that the law of procedure is not to be used in order to oust a person on a technical ground from getting a rights of a party on merits adjudicated by the competent court. In other words, the technicality of law should not deter the Court from

passing the orders on merits of the case or proceedings towards the resolution of the matter on merits rather than get bogged down by the technicalities. This principle of law is laid down by the Apex Court five decades back in the case titled **Sangram Singh Vs. Election Tribunal** AIR 1955 SC 425 wherein it was observed as under:

“A code of procedure is procedure, something designed to facilitate justice and further its ends: not a Penal enactment for punishment and penalties; not a thing designed to rip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.”

31. The learned counsel for the defendant no. 1 had also taken the point of rejection of the plaint on the ground of concealment of fact and placed reliance on case titled **S. P. Chengalvaraya Vs. Jagannath** AIR 1994 SC 853 and **AIR 1992 Delhi 197**. Similarly, the learned counsel for the plaintiff had also canvassed the point of rejection of the plaint on the ground of deficient payment of court fees by urging that land rate in Connaught Place is around 43,000/- per sq. meter and in West End Rs.7,00,000/- per sq. meter to urge that the plaintiff has to pay court fees after calculating the market value of both these properties by reference to the aforesaid land rates. No doubt, in **Chengalvaraya's case (supra)** the Court has said that concealment of material facts or

fraud would vitiate the entire proceedings void ab initio but the observations of the Supreme Court were passed in the fact situation which is not available in the instant case. Similarly in the Delhi High Court Judgment it was observed that concealment of material facts would disentitle a party from claiming discretionary relief of injunction. What is presently being decided is not the injunction application, and therefore, the Delhi High Court Judgment does not apply. Moreover, in the instant case the parties are yet to adduce evidence and the facts as placed clearly shows that the effort of the defendant is to somehow or the other keep the plaintiffs away from the properties left by their father who are the prima facie rightful successor of the properties left behind by their deceased father and the objection regarding payment of court fees on the basis of the market value at this stage is only being raised by the defendant as a ploy to keep the plaintiffs out of the adjudication of their rights qua the properties. The question of payment of court fees is again a question of procedure which in the light of the observations of the Supreme Court in **Sangram's Singh case (supra)**. In the light of peculiar facts of this property where the plaintiffs are residing abroad are being sought to be deprived of their being rightful successor of the property left behind by their father, I am not inclined to accept the plea of the defendant,

however, the defendant shall be free to adduce evidence in this regard on merits in respect of which an issue can be framed.

32. I, accordingly, for the abovementioned reasons feel that the application of the defendant under Order VII Rule 11 CPC for rejection of the plaint is totally misconceived and vexatious in nature as there does not seem to be even a single ground available in law which would merit the rejection of the plaint under Order VII Rule 11 CPC, and therefore, the same deserves to be dismissed.
33. The second application which has been filed by the plaintiff bearing no. 7093/2009 under Order XXXVIII Rule 5 CPC is with regard to the attachment of the suit property till the disposal of the suit so far as the West End property is concerned. This is on account of the fact that in the present suit the plaintiffs have claimed mesne profit to the tune of Rs.2,10,06,720/- which in the event of the being decreed in his favour may not be realized by him, and therefore, necessary orders have been prayed.
34. I do not agree with the contention of the learned counsel for the plaintiffs that the suit property which is situated in West End the portion which is under occupation of the plaintiffs and the other portion which is purportedly claimed by the plaintiff to be his share which is under the tenancy deserves to be attached in as much as order dated 25.05.2009 the plaintiff's interest has already

been secured and there is a restraint against the parties from creating any third party interest with regard to the title or the possession of the portion of the suit property. Because of this order it will not be open to the defendant no. 1 to transact any portion of the property which should be sufficient enough to secure the interest of the plaintiffs in the event of his succeeding in getting a decree for the mesne profits passed by the Court, therefore, the application of the plaintiffs under Order XXXVIII Rule 5 CPC is disallowed.

35. This leaves the Court with only one of the application bearing no. 7094/2009 under Order XL Rule 1 CPC for appointment of the receiver in respect of part of the property situated towards South End more particularly shown in the map in Green colour portion which is under the occupation of a tenant as well as the commercial property bearing no. 510, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi is sought to be governed by an appointment of a receiver. The Court is of the view that there is prima facie a case in favour of the plaintiffs for appointment of a receiver in respect of both these properties.
36. So far as the commercial property bearing no. 510, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi is concerned, it is not disputed that the same was agreed to be purchased by Late

Shri Rajendra Vikram Singh under an agreement to sell from the defendant no. 6 namely the Ansal Properties and the possession of the said property has been handed over to the perspective purchaser namely Late Shri Rajendra Vikram Singh but before his title in respect of the said property could be perfected, he expired. The defendant no. 1 had set up a WILL contending that by virtue of the said WILL the said commercial flat was bequeathed to him. The minimum which was expected by the builder/seller the defendant no. 6 was that it ought to have directed the defendant no. 1 to obtain a no objection certificate from the legal heirs of the deceased owner which has been done. It is also admitted case that WILL dated 5.12.2000 which has been made the basis for ownership by the defendant no. 1 is not a registered document with the Sub Registrar. Nor the same has been probated and yet the natural legal heirs of the deceased Rajendra Vikram Singh have been divested of the said suit property, therefore, it raises a reasonable doubt regarding the genuineness of the WILL and it could not be considered as the basis for mutation or endorsement of the agreement to sell in favour of the deceased in respect of the commercial property in favour of the defendant no. 1. Much less the defendant no. 1 could get the same endorsed in favour of his daughters so as to overreach the Court orders and to present as if the Court is powerless to balance the equity in respect of the suit

property. Admittedly, the said property is let out to a private party from whom the rent is being realized which is stated to be to the tune of Rs.6,00,000/- per month or so. The plaintiffs have filed the present suit not only for partition but also for realization of mesne profits part of which pertains to this commercial property and in case a receiver is not appointed or a direction is not issued to the Receiver to take the constructive possession of both the properties the defendant no 1 and his daughters are only going to fritter away the property but also making unjust enrichment by realizing the rent or using the same to their own benefit and to the detriment of the plaintiff. Further, the trial as the common knowledge goes, is likely to take considerable time. This will cause serious prejudice to the interest of the plaintiffs in as much as by the time the trial concludes the of the defendant no. 1 and his daughters would have realized substantial amount of money from the said property as rental to their advantage. The defendant no. 1 and his daughters have already realized the amount for which they have not been accounted, and therefore, keeping in view the principle of equity, fair play and justice apart from the property being frittered away, I consider it just and proper to appoint an officer of this court as the Receiver of the aforesaid two properties for the purpose of efficient management, protection, preservation, maintenance, upkeep of the suit properties and also the realization

of the rent from the said tenants. There was a direction passed by this Court on the application in the previous suit also that the rent be deposited by the tenants in Court, but the said suit was rejected and therefore, the said direction no more survives. The tenant of the two properties are directed to deposit their respective rent with the learned Registrar General, High Court of Delhi on or before 7th of each calendar month or alternately on the present order being served on the occupants/tenants of both these properties, they shall draw the rent in the name of Registrar General of this Court and deposit with him or hand over to the receiver who shall deposit the same with the Registrar General, Delhi High Court.

37. I, accordingly, appoint an officer of the Court with impeccable record be appointed as the receiver who will manage, supervise and take instructive charge of the properties. I accordingly, appoint **Ms. Priya Kumar, Advocate**, Mobile No. **9811355512** of this Court as the Receiver in respect of both the properties bearing no. B-10, West End, New Delhi and a commercial property bearing no. 510, Surya kiran Building, 19, Kasturba Gandhi Marg, New Delhi properties to carry out the aforesaid directions. The amount after leaving the amount of rent for one month shall be kept in a form of FDR initially for a period of one year which is to be renewed on expiry till order to the contrary are passed. So far as the rent of initial one month is concerned that should be utilized for meeting

the house tax liabilities or for carrying out necessary repairs or maintenance of the properties which can be drawn on application being made to the Registrar General of the Court. The learned receiver shall also be given a copy of the order and will visit both the premises and apprise the respective tenants about the order that henceforth they will have to comply with the direction of the Court regarding the deposit of their rentals in the name of Registrar General, Delhi High Court. The Receiver shall, for all practical purposes deal with the existing tenants as well as with the supervision, maintenance of the properties so that both the properties are kept in a proper habitable and usable condition so that its value does not get depleted. The learned Receiver shall also maintain account of the expenses incurred by her in any maintenance and repair of the properties which may be brought to her notice by the respective tenants or which she may feel necessary for the proper maintenance of the properties. The tenants of both the properties shall give access to the learned Receiver with due intimation in advance after sunrise or before sunset to the properties in case she wants to inspect and necessary intimation regarding the inspection of the properties shall be given to the learned counsel for the parties. The learned Receiver shall be paid an amount of Rs.10,000/- per month apart from expenses as her fee for undertaking the entire exercise by the

plaintiff which shall be recovered by them on quarterly basis from the Registry of this Court from the amount deposited by the learned Receiver. The learned Receiver shall further be entitled to take all such actions as may be considered by her to be reasonable, prudent and necessary for discharge of her duties enjoined under Order XL CPC. In the event there being any clarification needed by her she shall be free to file such applications may be permissible in law.

38. For the reasons mentioned above, the IA bearing no. 10546/2009 under Order VII Rule 11 (a) CPC and IA bearing no. 7093/2009 under Order XXXVIII Rule 5 CPC are disallowed. However, the IA bearing no. 7094/2009 under Order XL Rule 1 CPC is allowed. The expression of any opinion hereinabove shall not be treated as an expression on the merits of the case.
39. List on 23.2.2011 for the disposal of all the pending IAs.

V.K. SHALI, J.

November 12, 2010
KP