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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 281/2016 & IA No.6970/2016 (u/O XXXIX R-1&2 CPC)**
RAMESH NAYAR Plaintiff

Through: Mr. Anshul Garg, Advs.

Versus

S K NAYAR & OTHERS Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.02.2019**

1. Only Mr. Anshul Garg, Advocate working along with Mr. Vivek Sharma, Advocate for the plaintiff appears.
2. None appears for the defendants.
3. The counsel for the plaintiff states that the defendants have filed a suit against the plaintiff for recovery of possession of portion in occupation of the plaintiff in the property, for partition of which this suit has been filed by the plaintiff and the said suit is at an advance stage of recording of evidence and is listed next on 18th April, 2019 and this suit be posted for a date thereafter.
4. It is not understandable why the plaintiff filed this suit if was not interested in pursuing this suit and wanted the proceeding in the present suit to await the earlier suit between the parties.
5. The defendants are contesting this suit for partition filed by the plaintiff on the basis of the Will of the common predecessor and which Will the plaintiff is disputing.
6. The counsel for the plaintiff on enquiry states that one of the issues in

the said suit for possession is with respect to the validity of the said Will.

7. It is quite evident that if in the earlier suit the document claimed to be the Will is proved, the plaintiff would have no share in the property.

8. The only issue for adjudication in this suit also is with respect to the same Will. The defendants have also pleaded that the plaintiff while instituting this suit concealed the previously instituted suit and also the No Objection Certificate which the plaintiff had executed with respect to the Will.

9. I may mention that when this suit came up for admission on 22nd September, 2016, it was specifically enquired from the plaintiff whether any of the defendants had set up any Will of the common predecessor and the counsel for the plaintiff had then replied in the negative.

10. It is quite clear that the plaintiff got the summons of the present suit issued by concealing facts with respect to the Will and the previously instituted suit.

11. Be that as it may, now that the plaintiff himself is not interested in pursuing this suit and wants it to await the outcome of the suit for possession, no purpose will be served in keeping this suit pending.

12. The suit is dismissed with liberty to the plaintiff to, in the event of outcome of the earlier suit being in favour of the plaintiff, sue again for partition, if need so arises.

13. The suit is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 08, 2019

‘gsr’..

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