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

% Decided on: 24th September , 2019

\+ **CS(OS) 329/2017**

SHREE SHIV SHAKTI DHARMIK LEELA COMMITTEE ..... Plaintiff

Represented by: Mr.Vishwendra Verma, Adv.

versus

SMT. CHANNO DEVI & ANR ..... Defendants

Represented by: Mr.Kotla Harshavardhan and Ms.Manshi Sood, Advocates for defendant No.2.
Mr.Rajeev Verma and Mr.Dheeraj Sharma, Advs.for applicant in I.A. 13377/2017.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

I.A. No.11890/2017 (under Order VII Rule 11 CPC-by defendant No.2)

1. By this suit, plaintiff seeks a declaration in favour of the plaintiff as absolute owner of the property being plot Nos.9, 10, 11, 12, Khasra No.716/101/2/2, Raghubarpura No.1, Gandhi Nagar, Delhi-110031 (in short the suit property').

2. Claim of the plaintiff in the plaint is that it is a society registered with the Office of Registrar of Societies vide registration certificate No.X/197/43 having its registered office at X/514, Jain Gali, Raghubarpura No.1, Gandhi Nagar, Delhi- 110031. According to the plaint under the Aims and Objects of the society, a committee has been constituted to celebrate Ramleela and other religious functions at Shivkuti Ramleela Maidan, Main Road,

Raghubarpura No.1, Gandhi Nagar, Delhi and the society has constructed a temple on the said land. As per the documents placed on record the date of registration of the plaintiff society is 25th February, 1989. The plaintiff also claims to be in uninterrupted, continuous and open use of the suit property. However, as regards the claim of ownership of the plaintiff in the suit property is that the defendant No.1 Smt.Channo Devi who was a religious lady, in memory of her husband registered a trust and handed over the suit property to the plaintiff. Since then the plaintiff is running the charitable trust and serving the people of the locality. Defendant No.2 who is the grandson of defendant No.1 is stated to be involved in illegal activities and thus frustrating the purpose of charitable trust. Along with the suit, no document has been filed to show that a trust duly registered was created by Smt.Channo Devi and by virtue of that trust the ownership in the suit property was transferred to the plaintiff.

3. Ownership of the property cannot be transferred by way of an oral understanding and there being no documents in this regard placed on record, the present suit filed by the plaintiff seeking declaration of absolute ownership and right over the suit property is liable to be dismissed on this count itself. Further though in the plaint it is not stated when the property was handed-over but in the list of dates and synopsis filed along with the plaint it is stated that defendant No.1 handed over the suit property to the society in the year 1978. This is despite the fact that the plaintiff society got registered only in the year 1989 and hence there can be no entrustment of the suit property to the plaintiff society which was not in existence in the year 1978.

4. Learned counsel for the plaintiff submits that since the plaintiff has

already filed an application being I.A. No.13602/2017 to implead the legal heirs of defendant No.1 under Order XXII Rule 4 CPC r/w Section 151 CPC, the present plaint cannot be rejected unless the legal heirs of defendant No.1 are brought on record. This plea of the plaintiff also deserves to be rejected firstly for the reason when the plaintiff filed the present suit impleading defendant No.1 she was long dead and secondly this is an application for impleading legal heirs of defendant No.1 and not the plaintiff.

5. Section 123 of Transfer of Property Act reads as under:

> *"123. Transfer how effected*
>
> *For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.*
>
> *For the purpose of making a gift of moveable property, the transfer maybe effected either by a registered instrument signed as aforesaid or by delivery.*
>
> *Such delivery may be made in the same way as goods sold may be delivered."*

6. As no written document to show the transfer of the property in the name of the plaintiff has been placed on record by the plaintiff, the present suit is liable to be rejected.

7. Application is disposed of rejecting the plaint.

CS(OS) 329/2017

In view of I.A. No.11890/2017 (under Order VII Rule 11 CPC-by defendant No.2) for rejection of plaint being allowed, suit is dismissed.

I.A. Nos.8094/2017 (under Order XXXIX Rule 1 and 2 CPC), 11657/2017 (under Order XXXIX Rule 2A CPC), 11891/2017 (under Order XXXIX Rule 3 and 4 CPC), 11892/2017 (under Order XXXIX Rule 1 and 2 CPC-by defendant No.2), 13377/2017 (under Order I Rule 10 (2) CPC), 13602/2017 (under Order XXII Rule 4 CPC) and 13603/2017 (under Order XII Rule 8 CPC)

Applications are dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2019
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HIGH COURT OF DELHI
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