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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 645/2019 & IA No.17521/2019 (u/O XXXIX R-1&2 CPC)**
ARVIND KUMAR & ANR. Plaintiffs
Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Ashok K. Singh, Mr. Sachin Jain and
Ms. Tanishq Mehta, Advs.
versus
SUNITA & ANR. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.01.2020

1. The two plaintiffs namely Arvind Kumar and his minor daughter Apurva Khokhar, have instituted this suit against the mother and sister of Arvind Kumar, seeking (i) declaration as null and void of the Gift Deed dated 7th May, 2019 executed by the mother of Arvind Kumar in favour of sister of Arvind Kumar, of Property No.C-247, Surajmal Vihar, Delhi; and, (ii) permanent injunction restraining the mother and sister of Arvind Kumar from dealing with the said property to the extent of the share of the plaintiffs therein.
2. The suit along with an application for interim relief came up before this Court first on 11th December, 2019 when *inter alia* the following order was passed:-

“3. The two plaintiffs namely Arvind Kumar and his minor daughter Miss. Apurva Khokhar have instituted the suit against the mother and sister of the plaintiff no.1, for declaration as null and void of the Gift Deed dated 7th May, 2019 executed by the defendant no.1 in favour of defendant no.2 of property No.C-247, Surajmal Vihar,

Delhi and for permanent injunction to restrain the defendants from dispossessing the plaintiffs from the said property.

4. *The cause of action pleaded for the suit is the legal notice served by the defendant no.2 to the plaintiff no.1 to vacate the property.*

5. *No injunction, as sought, restraining the defendant no.2 from taking legal recourse for dispossessing the plaintiffs can be granted and the suit for permanent injunction is misconceived.*

6. *The plaintiffs are also not found to have any locus to seek declaration as null and void, of the Gift Deed dated 7th May, 2019 executed by the defendant no.1 in favour of defendant no.2.*

7. *It is the case of the plaintiffs, (i) that the grandfather of the plaintiff no.1 was the owner of two immovable properties and which were transferred by him to the father of the plaintiff no.1 and the father of the plaintiff no.1, by selling the said properties, purchased the property No. C-247, Surajmal Vihar, Delhi in the name of defendant no.1; and, (ii) the plaintiffs thus claim the Surajmal Vihar property to be the ancestral and coparcenary property and the plaintiffs having a share therein.*

8. *The aforesaid facts do not show any constitution of Hindu Undivided Family (HUF) or coparcenary and also do not show the property to be of the HUF and/or coparcenary if any.*

9. *The counsel for the plaintiffs, while pleading the property to be the ancestral, has not even bothered to give the date of the demise of the grandfather of the plaintiff no.1 i.e. whether it was prior to the coming into force of Hindu Succession Act, 1956 or thereafter.*

10. This is another class of the suits filed under the misconception as to Hindu law, particularly relating to succession.

11. Ms. Sonakshi Monga, Advocate who appears for the plaintiffs, being unable to address on any of the aforesaid issues, seeks adjournment for Mr. Ashok K. Singh, Advocate to address.

12. List on 23rd December, 2019.”

3. The counsel for the plaintiffs did not appear on 23rd December, 2019 also and sought adjournment which was granted and the suit listed for today.

4. After some arguments the senior counsel for the plaintiffs, under instructions, withdraws the suit with liberty to file a fresh suit. The senior counsel for the plaintiffs clarifies that the fresh suit would not be based on the claim of the plaintiffs in the present suit, of the property being of a Hindu Undivided Family (HUF) and the plaintiffs thus having a share therein. It is further clarified that the plaintiff no.1 Arvind Kumar, in the fresh suit if any filed by him, shall challenge the sale deed of the property in favour of the mother of Arvind Kumar, on the ground of consideration for the said sale deed having flown from the father of Arvind Kumar and invoking Section 2(9)(A)(iii) of the Prohibition of Benami Property Transactions Act, 1988 and claiming a share in the property as an heir of his father.

5. The suit is dismissed as withdrawn on the condition that the plaintiffs, within one week of today serve a complete copy of the paper book of this suit as well as the orders dated 11th December, 2019, 23rd December, 2019 and today's order to the defendants and further on the condition that the

plaintiff no.1 Arvind Kumar in the fresh suit if any filed, prominently discloses the factum of filing of the present suit and the orders herein and along with the said suit files a complete paper book of the present suit, the plaintiff no.1 Arvind Kumar shall have liberty to institute a fresh suit as per clarification aforesaid of the senior counsel for the plaintiffs.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 08, 2020
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