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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 101/2016, IA No.2822/2016 (u/O XXXIX R-1&2 CPC), IA No.7650/2016 (u/O VII R-11 CPC), IA No.8882/2016 (u/O I R-9&10 CPC), IA No.5075/2016 (u/O XXXIX R-4 CPC), IA No.5076/2016 (u/O VII R-11 CPC), IA No.7213/2016 (u/O I R-9&10 CPC) & IA No.7215/2016 (u/O VII R-11 CPC)

NEERU DHIR AND ORS

..... Plaintiffs

Through: Mr. Rakesh Mukhija, Mr. Rajiv Singh
Pilania, Ms. Gauri Gupta & Ms. Ankit
Sharma, Advs.

Versus

KAMAL KISHORE AND ORS

..... Defendants

Through: Mr. Nilava Banerjee & Ms. Swati
Sinha, Advs. for D-1.
Mr. Lakshay Dhamija & Mr. S.
Rastogi, Advs. for D-2 to 9.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.04.2019

1. The plaintiffs have instituted this suit for partition of property No.C-324, Vivek Vihar, Delhi claiming that the three plaintiffs together have 1/10th share therein.
2. The property is stated to be constructed over 200 sq. yds. of land and comprising of ground floor and first floor.
3. The plaintiffs no.1 and 3 are in exclusive occupation of the property and the plaintiff no.2 is stated to be resident of Australia.
4. The property is admittedly in the name of the defendant no.1.
5. The plaintiffs are the widow and children of deceased brother of defendant no.1 and the defendants no.2 to 9A are the other siblings of the defendant no.1.



6. It is the claim of the plaintiff that the property was acquired, though in the name of the defendant no.1 but out of monies of the father and thus all the siblings have a share therein.
7. The application of the defendant no.1 for rejection of the plaint *inter alia* on the ground of the claim therein being barred by the Prohibition of Benami Property Transactions Act, 1988 is pending consideration and counsels have been heard thereon.
8. The counsel for the plaintiffs has fairly admitted that under the Benami Transaction (Prohibition) Act, 1988 as amended with effect from 11th August, 2016 and now known as The Prohibition of Benami Property Transactions Act, 1988, the plaintiffs have no right.
9. In my *prima facie* opinion, even under the unamended Act the plaintiffs have no right and in any case the amended provisions have to be enforced even though the suit is found to have been instituted on 25th February, 2016 i.e. prior to the coming into force of the amended Act with effect from 11th August, 2016.
10. The plaintiffs admittedly are in exclusive control and possession of the property since the demise of the common predecessor on 28th December, 1993 and if at all the suit is dismissed would also be liable for *mesne profits* / damages for use and occupation to the defendant no.1.
11. The possibility of amicable settlement, considering that the parties are members of a family, has been explored.
12. The counsel for the plaintiffs states that the plaintiffs are willing for any settlement as may be proposed by the Court.



13. The defendants no.2 to 9A are supporting the defendant no.1.
14. I have requested the counsel for defendant no.1 as well as the counsel for defendants no.2 to 9A to consider whether any monies can be paid to the plaintiffs subject to the plaintiffs immediately vacating the property and delivering vacant physical possession thereof to the defendant no.1.
15. Though the counsel for the defendant no.1 states he does not have the telephone number of the defendant no.1 who is in U.K., the counsel for defendants no.2 to 9A says he will ensure that the defendant no.1 speaks to his Advocate. The plaintiff Neeru Dhir as well as the defendant no.4 Dr. Lt. Col. Ashok Kumar Dhir are also requested to remain personally present in the Court on the next date of hearing.
16. List on 3rd May, 2019.

RAJIV SAHAI ENDLAW, J.

APRIL 24, 2019

‘gsr’..