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

+ **CS(OS) 61/2021, I.A. Nos. 11688/2019, 11222/2020 & 364/2021**

HARISH GUPTA

..... Plaintiff

Through: Mr. Shivcharan Garg, Mr. Imran
Khan and Ms. Pooja Bansal,
Advocates.

versus

PRADEEP GUPTA & ANR.

..... Defendants

Through: Mr. Manish Gupta, Advocate for D-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

11.04.2022

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I.A. No. 187/2020 (u/ Order VII Rule 11 (b) & (c) r/w Section 151 of the Code of Civil Procedure, 1908 [hereinafter "CPC"] on behalf of D-1 seeking rejection of plaint)

1. The Applicant/ Defendant No. 1 seeks rejection of the plaint on the ground of non-payment of requisite Court fees. The Applicant asserts that the Plaintiff has not paid *ad-valorem* Court fees on the valuation of suit properties as per market rates.

2. Briefly put, it is the case of the Applicant that the Plaintiff has alleged that he is in joint possession of the suit properties, and at the same time, also admitted that the Applicant has let out the suit properties and is receiving rent therefrom. It is contended that the Plaintiff is neither in exclusive nor joint possession of the suit properties. In these circumstances, it is argued



that the Plaintiff would be required to pay *ad-valorem* Court fees on his share and not fixed Court fees as per Article 17 (vi) of Schedule II of the Court Fees Act, 1870 [*hereinafter “Court Fees Act”*].

3. The Court has heard the counsel for the parties on this issue. In paragraph Nos. 7 and 23 of the plaint, the Plaintiff asserts that he is in joint possession of the suit properties. As of now, the presumption of joint possession of the Plaintiff entitles him to take benefit of the provision and pay only fixed Court fees. Thus, in view of the settled position in law, only fixed Court fees would be payable under Article 17 (vi) of Schedule II of Court Fees Act as the Plaintiff has pleaded to be in joint possession of the suit properties.¹

4. In view of the foregoing, the Court does not find any ground to reject the plaint and accordingly, the application stands dismissed.

I.A. No. 186/2020 (u/ Order VII Rule 10 r/w Section 151 of CPC on behalf of D-1 seeking return of plaint)

5. The present application has already been disposed of *vide* Order dated 08th October, 2021.

6. Registry is directed not to reflect the present application in the cause list.

¹ See: the judgments of this Court in *Krishna Gupta and Anr. Rajinder Nath and Co. HUF & Ors.*, 2013 (134) DRJ 246 and *Saroj Salkan v. Capt. Sanjeev Singh and Ors.* 155 (2008) DLT 300 (DB).



I.A. No. 11686/2019 (u/ Order XXXIX Rule 1 & 2 r/w Section 151 of CPC on behalf of Plaintiff seeking interim ex-parte injunction against the Defendants)

7. The Plaintiff has filed the afore-said application, *inter alia*, seeking interim injunction against the Defendants to restrain them from creating third-party interest(s) in favour of properties enumerated in paragraph No. 5 of the plaint.

8. The Plaintiff and Defendants are siblings. The Plaintiff has filed the above-captioned suit, *inter alia*, seeking partition of the immovable and movable assets (as described in paragraph No. 5 and 6 of the plaint) belonging to his father and mother *viz.* late Sh. Nanak Chand Gupta (deceased on 07th April, 2018) and late Smt. Maya Gupta (deceased on 02nd February, 2019). Defendant No. 1 has relied upon two Wills both dated 30th November, 2017 of late Sh. Nanak Chand Gupta and late Smt. Maya Gupta – to claim that some of the suit properties have been bequeathed to him exclusively under the said Wills. Probate petitions *qua* the afore-said Wills are pending before the District Court.²

9. Defendant No. 2 supports the Plaintiff as she also seeks share in the suit properties of her deceased parents as well on the ground that have died intestate.

10. In the written statement of Defendant No. 1 – it is alleged that the immovable properties at serial Nos. D, E, G in paragraph No. 5 of the plaint

² Probate Case Nos. 27 and 28 of 2019.



do not belong to late Sh. Nanak Chand Mehta. The Plaintiff is unable to controvert the same.

11. There is no dispute between the Plaintiff and Defendant No. 1, that the following properties are in the name of the deceased father viz. late Sh. Nanak Chand Gupta: -

- (i) Property *bearing* No. 10-A/38, Ground Floor, Shakti Nagar, Delhi-110007;
- (ii) Property *bearing* No. C-2327, Ground & First Floor, Basti Punjabiyan, Delhi-110007;
- (iii) Property *bearing* No. C-243, Sector-4, Bawana Industrial Area, Delhi;
- (iv) Property *bearing* No. B-46, Sector-4, Bawana Industrial Area, Delhi;
- (v) One flat at Mohali, Punjab; and
- (vi) One plot at Durga Puram Colony, Panighat, Vrindavan, Distt. Mathura, Uttar Pradesh.

12. The authenticity of the Wills are yet to be determined and probate petitions in that regard, are pending. Thus, determination of shares of the parties would require trial. Accordingly, the suit properties require to be preserved. Till the pendency of the present suit, the parties shall maintain *status quo* with respect to: -

- (i) Immoveable properties at serial Nos. A, B, C, F, H & I of paragraph No. 5 of the plaint (as reproduced above), and
- (ii) Immoveable properties at serial Nos. (i) A and B of paragraph No. 6 of the plaint, which the counsel for Defendant No. 1 admits to be owned by late Smt. Maya Gupta.



13. With the above directions, the present application stands disposed of.

CS(OS) 61/2021

14. List before the Ld. Joint Registrar on 13th May, 2022 for consideration of pending applications.

SANJEEV NARULA, J

APRIL 11, 2022

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