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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (OS) 179/2014**

SURINDER SINGH REKHI

..... Plaintiff

Through: Ms. Rachna Agrawal, Advocate with
Mr. Sundeep S. Rekhi, son of Plaintiff
in person. (M:9899007471)

versus

DR. T. S. REKHI & ORS.

..... Defendants

Through: Ms. Babita Seth, Counsel for D-2(a)
& 2(b). (M:9811235539)
Mr. Siddharth Khattar, Advocate for
D-8(b). (M:9810700078)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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12.04.2019

I.A. 15127/2017 (u/O XXII Rule 4 CPC)

1. This is an application under Order XXII Rule 4 CPC to implead legal heirs of Defendant No.6 – Shri Joginder Singh Rekhi. Defendant No.6 was a bachelor and had no class-I legal heirs. All his class-II legal heirs are his two brothers and two sisters. They are the Plaintiff, Defendant No.5, Defendant No.7 and Defendant No.9. All the four legal heirs of Defendant No.6 having already been impleaded in the suit, no further orders are called for in this application. They are deemed to be served in the application under Order XXII Rule 4 CPC. Amended memo of parties is taken on record. I.A. is disposed of.

I.A. 13395/2017 (u/O VII Rule 11 CPC)

2. Submission of Ld. Counsel for the Defendants is that the suit has not been properly valued and the proper court fee has not been paid. This is a suit for partition where the Plaintiff claims to be in constructive possession.

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The question as to whether the Plaintiff is in possession of any of the properties would have to be, at this stage decided on the basis of the averments in the plaint. The Plaintiff pleads in paragraph 10 of the Plaint that he is in physical possession of the property no.211, Jor Bagh, New Delhi and in legal possession of the remaining properties. In view of the judgment in *Tara Chand Gaur v. Satish Chand Sharma & Anr.*, 256 (2019) DLT 61, the issue of court fees shall be adjudicated after the trial of the suit once oral evidence would be led in respect of the physical possession and the parties would have to be heard in respect of legal possession. The Plaintiff, however, has given an undertaking to this Court that any court fee, as may be determined, shall be deposited at the later stage.

3. Accepting the undertaking of the Plaintiff, present I.A. is disposed of.

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4. The two properties in question are property bearing No.211, Jor Bagh, New Delhi and C-16, Nizamuddin East, New Delhi, New Delhi. The Court appoints **Mr. K.C. Talwar, Chartered Engineer (M:9810079212)** as the Valuer to place on record the valuation report of both these properties, both as per the circle rates and market rate in order to enable parties to explore amicable resolution, if they wish to do so. Fee of the Valuer is fixed at Rs.50,000/- to be shared equally between the Plaintiff and Defendants 2(a) & (b), 8(b) and legal heirs of Defendant no.5.

5. List on 22nd July, 2019 for framing of issues. Parties to bring proposed issues.

PRATHIBA M. SINGH, J.

APRIL 12, 2019/dk