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

+ CS(OS) 40/2016

VISHNU KUMAR GUPTA & ANR ..... Plaintiffs

Through: (Appearance not given)

versus

KUSUM BANSAL & ORS ..... Defendants

Through: Mr. Rohan Jain, Advocate for D. Nos.  
1 & 2

Mr. Vijay Kumar Wadhwa, Advocate  
for D-3

**CORAM:**

**SHARAD GUPTA (DHJS), JOINT REGISTRAR (JUDICIAL)**

**ORDER**

% **10.12.2018**

**I.A. No. 11250/2017 U/O VII Rule 14 CPC moved by thye plaintiff**

This application is moved by plaintiff for placing on record the following documents:

- (i) Original Passbook of savings a/c no. 1547 from the year 1992 to 2006 issued by Andhra Bank.
- (ii) Original Passbook of PPF a/c issued by State Bank of India, Punjabi Bagh West.
- (iii) Original letter dt. 12.04.2016 issued by Bank of India, Peera Garhi Rohtak Road, Delhi
- (iv) Original Letter dt. 25.04.2016 issued by Bank of India, Peera Garhi, New Delhi along with a copy of sale deed showing endorsement of receipt by defendantno.2, copy of Valuation report of property No. 12/18, East Punjabi Bagh, by Goel & Associates, and a copy of Search Report dated 23.10.1997 by

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Sunil Kumar Gandhi Advocate.

It is stated that the said documents are crucial for proper adjudication of controversy between the parties. That the said documents were not available earlier being misplaced and hence the present application has been filed. That the case is yet at initial stage and evidence has not yet commenced. That the documents are in consonance with the pleadings and have been referred to in the affidavit of evidence also. Hence, the present application has been filed. Reliance is placed on the pronouncements in (i)Ashok Sharma Vs/ Ram Adhaar Sharma (2009)SCC 47; (ii)Kapil Kumar Sharma Vs. Lalit Kumar Sharma and another (2013) 14 SCC 612; (iii)Rukaiyabibi Ahmed Ali Ismail and Others Vs. Musa Ismail Mahmed Khusal and Others (2014) 16 SCC 422.

The defendant nos. 1 and 2 have filed joint reply asserting that the present application has been moved at a belated stage after framing of issues with purpose only to delay the matter. That the plaintiffs have not mentioned in whose power or possession the said documents were available in terms of order VII Rule 14 CPC. That there is no reference to the documents in the original plaint. It is prayed that the present application be dismissed. Reliance is placed on pronouncement in *Polyflor Ltd. Vs. Sh. A.N. Goenka & Others CS(OS) 504/2004, decided on 18.04.2016.*

I have heard rival submissions at bar of learned counsel for parties and perused the record of the case. It would be fruitful here to

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advert to the factual matrix of the case culminating in the captioned IA. Briefly stated the plaintiffs are the real brothers of defendant no.2 while defendant no.1 is the wife of defendant no.2. The present suit *inter alia* seeks partition of property no. 12/18 east Punjabi Bagh, New Delhi on ground that the said property was purchased in the joint names of the plaintiffs as well as defendant no.2. The plaintiffs are also seeking inter alia relief of declaration seeking to declare the memorandum of partition dated 11.05.1990, receipts of even date as null and void, gift deed dated 26.11.2012 as null and void and the collaboration agreement between defendants 2 and 3 as null and void.

It has been observed that contention of plaintiffs in the suit is that after purchase of the suit property, plaintiffs as well as defendants 1 and 2 have been residing in the said property with their respective family members. That while plaintiff no. 2 shifted from suit property to Sri Ganga Nagar, Rajasthan in the year 1994, plaintiff no.1 shifted to Rohini in 1997. Assertions in this regard have been made in paras 3 and 4 of the plaint. Furthermore, in para no.16 of the plaint it is mentioned that in case the plaintiffs had transferred their shares in the suit property in favour of defendant no.1, as asserted by the defendants, there was no occasion for defendant nos .1 and 2 to intimate the Bank of India SSI Branch, Peera Garhi Delhi in the year 1997-98 while taking a loan in the name of their company Avneet Food Products Pvt. Ltd, that the suit property is jointly owned by the plaintiffs and defendant no.1, which fact has recently come to the

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knowledge to the plaintiffs. There are also assertions that defendants admitted before the bank that the property is jointly on by plaintiffs and defendant no.1(*sic defendant no. 2*).

Thus, the documents viz. passbook of savings bank account no.1547 issued by Andhra Bank and original passbook of PPF account issued by State Bank of India Punjabi Bagh are meant to corroborate the assertion of plaintiffs, already made in the plaint that they were residing in the suit property. Furthermore, the original letters dt. 12.04.2016 and 25.04.2016 issued by Bank of India pertain to the credit facilities obtained by M/s Avneet Food Industries, copy of sale deed and valuation report, etc. submitted to the bank and the same find factual basis in the pleadings as contained in para no.16 of the plaint.

Thus, the documents sought to be produced on record are not without any factual basis. Rather the documents would be helpful in proper adjudication of the present matter and their production on record would advance the cause of substantial justice. Thus, the plaintiffs would not be taken by surprise in case production of the said documents is allowed.

Furthermore, although issues have been framed in the present suit the recording of plaintiffs evidence has not yet commenced. It is a matter of record that the plaintiff has filed captioned IA simultaneously with the list of witnesses and affidavit of PW /Vishnu Kumar Gupta. Furthermore, the list of witnesses already filed on

record by the plaintiff also mentions that witnesses from Andhra Bank, State Bank of India and Bank of India, Peera Garhi are required to be summoned for proving the documents supra on record.

As such no prejudice would be caused to the defendants in case the captioned IA is allowed for the reason that the defendants will have sufficient opportunity to cross-examine the witnesses of plaintiff in respect of the documents sought to be produced on record.

Furthermore, in as much as the captioned IA was filed alongwith the list of witnesses and affidavit of PW/Vishnu Kumar Gupta, it cannot be said that the captioned IA was filed merely to delay the present suit.

Furthermore, it is well settled that each case turns upon its own peculiar facts. In *Polyflor* (supra), the application under order VII Rule 14 was moved after plaintiffs witness had been substantially cross-examined. Furthermore, the documents sought to be produced were such as were required to be maintained by the plaintiff therein under statutory obligation. In the said factual background it was observed that no cogent reason for non production of the documents earlier had been shown.

However, in the present case, cross-examination of plaintiffs witnesses has not yet commenced. Furthermore, plaintiffs are seeking to place on record their saving bank and PPF account passbooks, and documents pertaining to loan facility purportedly obtained by the defendants. The said documents are of a different nature than the

statements of account to be maintained under statutory obligation as in *Polyflor* (supra).

It is stated in the captioned IA that the documents were misplaced earlier. In the peculiar fact, to my mind the plaintiff have shown a cogent reason for non production of the documents alongwith the suit. As such the ratio of *Polyflor* (supra) is of no help to the defendants in the facts of the present case. In view of the above, the captioned IA is disposed of as allowed to be extent that the documents mentioned in para III of the captioned IA are allowed to be taken on record.

Re-notify for plaintiffs evidence on 11.02.2019.

**SHARAD GUPTA (DHJS)**  
**JOINT REGISTRAR (JUDICIAL)**

**DECEMBER 10, 2018/rr**