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

+ CS(OS) 446/2020

I.A.12520/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A.12521/2020 (exemption)

I.A.12522/2020 (under Order VII Rule 14 CPC)

I.A.12523/2020 (exemption from advance service to defendants)

VIPIN KUMAR MANAKTALA Plaintiff

Represented by: Mr.Jayant Mehta, Advocate with
Mr.Ritesh Chowdhary, Advocate

Versus

SHRI VINOD KUMAR & ORS. Defendant

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

22.12.2020

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The hearing has been conducted through video conferencing.

I.A.12523/2020 (exemption from advance service)

1. By this application, the plaintiff seeks exemption from advance service of the defendants on the ground that the Email IDs of the defendants were not available.

2. Application is disposed of exempting the plaintiff from making advance service to the defendants.

I.A. 12521/2020 (exemption)

1. Exemption allowed subject to just exceptions. Original documents, if



any, be filed within thirty days.

2. Application is disposed of.

CS(OS) 446/2020

I.A.12520/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A.12522/2020 (under Order VII Rule 14 CPC)

1. Complaint be registered as a suit.

2. Issue summons in the suit and notice in the applications to the defendants on the plaintiff taking steps through Email, SMS, Whatsapp, Speed Post and Courier, returnable before the learned Joint Registrar for completion of service, pleadings and admission-denial of documents on 9th March, 2021.

3. Written statements to the suit and reply affidavits to the applications along with the affidavits of admission-denial be filed within thirty days. Replication and rejoinder affidavit along with the affidavit of admission-denial within three weeks thereafter.

4. List the suit and applications before Court on 27th May, 2021.

5. The plaintiff is the son of Late Sh. Satya Pal, who along with his two brothers namely Tilak Raj and Prithvi Raj after migrating to India in 1947 acquired the four properties i.e. (i) 6057 Sadar Bazaar, Delhi; (ii) property No. XVI/191-193 Faiz Road, Delhi having an area of 594 sq. yds.; (iii) Suit property i.e. 39, Rama Road, Industrial Area Scheme, Najafgarh Road, New Delhi, admeasuring about 0.97 acres and (iv) House No. E-6/13, Vasant Vihar, New Delhi. It is the case of the plaintiff that an oral partition of the business and the properties took place between Late Sh. Satya Pal, Tilak Raj and Prithvi Raj pursuant to the appointment of Late Sh. Bal Krishan as the Sole Arbitrator vide the arbitration agreement dated 19th February, 1976.



The oral family settlement which also formed part of the Will dated 27th September, 1978 of the mother of the three brothers decided that the property No. 39, Rama Road, Industrial Area Scheme, Najafgarh Road would go to the share of Satya Pal and the other three remaining properties i.e. (i) 6057 Sadar Bazaar, Delhi; (ii) property No. XVI/191-193 Faiz Road, Delhi and (iii) E-6/13, Vasant Vihar, New Delhi would be divided and utilized between Tilak Raj and Prithvi Raj.

6. Since in the official records, the suit property i.e. 39, Rama Road, Industrial Area Scheme, Najafgarh Road continued in the name of three brothers, Tilak Raj filed a suit for partition being CS(OS) 2850/1987 before this Court. Father of the plaintiff and defendant Nos.1, 2, 3 filed a written statement stating about the oral partition and also the arbitration through Late Sh. Bal Krishan, the Sole Arbitrator. On the death of Late Sh. Satya Pal, the plaintiff and defendant Nos. 1, 2 and 3 were impleaded as legal heirs and they were represented by a common counsel who was being regularly instructed by the defendant Nos.1, 2 and 3 who were also appearing before the Court. However, on one date, learned counsel made a statement that he had no instructions from the plaintiff and thereafter, no notice was given to the plaintiff. In the meantime, a settlement was arrived at in the said suit between Tilak Raj, and the defendant Nos. 1 and 2, by virtue of which, the 1/3rd share of Rama Road property was given in favour of Tilak Raj and 1/3rd share to Prithvi Raj-defendant No.6 herein, who then transferred the same to defendant No.7 herein M/s. Gora Mal Hari Ram Pvt. Ltd., a company owned by Sh. Vinod Kumar and Sh. Ranjan Kumar i.e. defendant Nos.1 and 2 herein, and the share to the successors of Satya Pal thus reduced to 1/3rd in the Rama Road property though Satya Pal was entitled to the



entire suit property. Therefore, instead of getting 25% of the Rama Road property, the plaintiff was now entitled to 25% of the 1/3rd share in the Rama Road Property.

7. On the basis of this partial settlement, an application under Order XXIII Rule 3 CPC was filed and vide order dated 13th September, 2012, the said application was decided by dropping the plaintiff from the suit which was never to the knowledge of the plaintiff. Subsequently, defendant No. 6 transferred the 1/3rd share of the suit property which fell to his share, to defendant No.7-M/s. Gora Mal Hari Ram Pvt. Ltd. who then transferred it to defendant No. 4, an outsider on 7th October, 2019 for a sale consideration of ₹13,32,00,000/-. It is in January, 2020 when the plaintiff's son was inspecting the property that he learnt about structural changes and on enquiry, found what had happened at the back of the plaintiff.

8. Considering the fact that in a suit for partition, even if the plaintiff, Tilak Raj in CS(OS) 2850/1987 had given up the defendants including the plaintiff, there could be no compromise of the share of the plaintiff at his back, this Court finds that the plaintiff has made out a prima facie case in his favour and in case no ex-parte ad-interim injunction is granted, the plaintiff would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiff and against the defendants. Consequently, till the next date of hearing before this Court, the defendant Nos. 1 to 7 are restrained from creating any third party rights by alienating, selling, encumbering, assigning, leasing or licensing the suit property i.e. 39, Rama Road, Industrial Area, Najafgarh Road, New Delhi.

9. Compliance under Order XXXIX Rule 3 CPC be done within one week.



10. Copy of the order be uploaded on the website of this Court.

MUKTA GUPTA, J.

DECEMBER 22, 2020
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