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

+ **CS(OS) 598/2019**

VINAY KUMAR HUF & ORS.

..... Plaintiffs

Through: Mr. Atul Sharma & Mr. Siddarth Mehra, Advs.

Versus

AJAY KUMAR HUF & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.11.2019**

IA No.16197/2019 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(OS) 598/2019 & IA No.16196/2019 (u/O XXXIX R-1&2 CPC)

3. The three plaintiffs have sued the three defendants for (i) declaration, (ii) specific performance of Memorandum of Understanding (MOU) dated 12th July, 2016, (iii) recovery of possession of immovable property and (iv) permanent and perpetual injunction.
4. The recorded title of all the properties, with respect to which reliefs are claimed, has not been disclosed. Merely under the garb of a Family Settlement, rights in property cannot be created, if earlier any right did not exist. Reference if any required in this regard can be made to ***Rama Nand Vs. Roop Ram*** (2018) SCC OnLine Del 10186; ***Pushpa Saroha Vs.***

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Mohinder Kumar 157 (2009) DLT 425; ***Kalpana Butta Vs. Pritendra Butta*** MANU/DE/2912/2018; ***Neeru Dhir Vs. Kamal Kishore*** (2019) SCC OnLine Del8910; ***Sanjiv Gupta Vs. Manoj Loharia*** (2018) SCC OnLine Del 9105; ***Tek Bahadur Bhujil Vs. Debi Singh Bhujil*** AIR 1965 SC 292; ***SK Sattar SK Mohd. Choudhari Vs. Gundappa Bukate*** (1996) 6 SCC 373 and ***Theiry Santhanamal Vs. Viswanathan*** (2018) 3 SCC 117. Title to properties cannot be changed without complying with the laws, merely by giving it the nomenclature of an MOU/Family Settlement. Moreover, Benami Laws are now in force and it will have to be explained how the properties, though recorded in the name of individuals, even if members of the family, are claimed to be properties of the family. With respect to one of the properties, admittedly the same belong to the mother of the plaintiff no.2 and the defendant no.2 and who has, besides the plaintiff no.2, and the defendant no.2 admittedly left other heirs. The said heirs have not been impleaded as parties. There are two earlier suits pleaded but the pleadings with respect thereto have not been filed. It appears that the questions as are likely to arise in this suit are already for adjudication in the previously instituted suits. The valuation of the suit for the relief of specific performance is also not in accordance with law. The relief of recovery of possession of the property, though also in pursuance to the MOU, has been valued separately but not as per law for such reliefs and ad-hoc at Rs.2 crores, to bring the valuation for the purpose of jurisdiction to the minimum pecuniary jurisdiction of this Court. Moreover, the plaintiff no.1, plaintiff no.3, defendant no.1 and defendant no.3 are not disclosed, on the averments in the plaint, to be necessary or proper parties.



5. The counsel for the plaintiffs to have a relook at the plaint.
6. List on 16th December, 2019.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2019
‘gsr’