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

+ **CS(OS) 346/2016 & IA No.16862/2018 (u/S 151 CPC)**

AJIT GOGNA

..... Plaintiff

Through: Mr. Sunil Lalwani, Adv.

Versus

JITENDER GOGNA & ORS

..... Defendants

Through: Mr. Sanjeev Sindhwani, Sr. Adv. with
Mr. Siddharth Aggarwal, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.12.2018**

Review Petition No.439/2018 in CS(OS) No.346/2016

1. The counsel for the plaintiff appears on advance notice.
2. Review is sought of the order dated 31st January, 2018.
3. The senior counsel for the defendant no.1 / review applicant, at the outset states that review is entitled to be allowed because of the liberty granted by the Division Bench in appeal.
4. That does not constitute a ground for allowing the review.
5. The senior counsel for the defendant no.1 / review applicant has next contended that no application is required for leading secondary evidence of the Will on the basis of which the defendant no.1 / review applicant has raised the defence.
6. I have enquired from the senior counsel for the defendant no.1 / review applicant, the pleading where the defendant no.1 / review applicant has pleaded the whereabouts of the original. It has similarly been enquired, whether not the defendant no.1 / review applicant, on 31st January, 2018



also, stated that the counsel was not aware of the whereabouts of the Will and it must be with the defendant No.1/review applicant. It was in the said state of affairs that the order dated 31st January, 2018 was made.

7. The senior counsel for the defendant no.1 states that “it was a loose statement”.

8. It is owing to the said loose statements that the High Court has been reduced to a moffusil court. It does not behove a counsel before the High Court to, when appearing before the Court, not know the law and the facts. It was incumbent upon the defendant no.1/review applicant to, in the written statement itself plead the whereabouts of the original.

9. The senior counsel for the defendant no.1 / review applicant states that as on the date of filing of the written statement, the original was available with the defendant no.1 / review applicant but the same was lost around March, 2017 and a complaint in this regard was made on 25th March, 2017.

10. The fact remains that on 31st January, 2018, all these facts were not disclosed and the counsel for the defendant no.1 / review applicant acted in a ‘loose fashion’ as claimed. Moreover, if the original document was available with the defendant No.1/review applicant at the time of filing written statement, it should have been filed therewith.

11. Orders are made on the basis of what transpires in the Court and the counsels cannot choose the date, on which they will be informed and the dates on which they will not be informed.

12. As far as the other argument for review, of *mesne profits* being not entitled to be awarded in a partition suit is concerned, as far as I recollect,



there is a plethora of case law on the same. Reference may be made to ***Seth Girdhari Lal Vs. Seth Gaja Nand*** ILR (1974) I Del 864, ***Sita Kashyap Vs. Harbans Kashyap*** 2011 (123) DRJ 52 and ***Neety Gupta Vs. Usha Gupta*** 2018 SCC OnLine Del 12574.

13. The senior counsel for the defendant No.1/review applicant also objects to the quantum.

14. Be that as it may, it is deemed appropriate to hear counsels further on 27th February, 2019.

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15. Since the suit is listed on 12th December, 2018 before the Joint Registrar, it is deemed appropriate that the defendant no.1, without prejudice to pendency of review, files affidavits by way of examination-in-chief of its witnesses within four weeks as sought and the suit be scheduled thereafter before the Joint Registrar for recording of evidence.

16. Needless to state, the aforesaid will be without prejudice to the pendency of the review.

17. If the review is allowed, the consequences will follow.

18. However, recording of evidence cannot be stalled and to go on.

RAJIV SAHAI ENDLAW, J

DECEMBER 10, 2018

‘gsr’..