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

+ CS(OS) No.2092/2013 and IA No.14295/2016 (of the plaintiff under Order XI Rules 1& 14 CPC)

CAPTAIN BHUPINDER KUMAR SURI Plaintiff
Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Venancio D'costa and Ms. Astha,
Adv.

Versus

NARESH KUMAR SURI & ORS Defendants
Through: Mr. M.R. Chawla and Mr. Aditya
Vaibhav Singh, Adv.
Ms. Pankhi proxy counsel for Mr.
Rajeev Kapoor, Adv. for D-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 15.02.2017

CS(OS) No.2092/2013 and IA No.14295/2016 (of the plaintiff under Order XI Rules 1& 14 CPC).

1. Vide separate order pronounced today, application of defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed.
2. The counsel for the defendant no.1 points out that the plaintiff in the amended plaint filed pursuant to the amendment allowed on 11th November, 2016 has carried out amendments permission wherefor was not sought.
3. The senior counsel for the plaintiff after going through the amended plaint and the plaint as earlier existing admits and apologises for the same.
4. I have enquired from the counsel for the defendant no.1 whether any of the illegal amendments have any material bearing on the outcome of the

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suit.

5. The counsel for the defendant no.1 has fairly stated that none of the illegal amendments have any material bearing on the outcome of the suit.

6. In this view of the matter, it is not deemed appropriate to direct the plaintiff to again file an amended plaint and to defer the framing of issues for the said purpose.

7. The counsel for the defendant no.1 states that framing of issues be deferred and in this regard relies on **R.K. Roja Vs. U.S. Rayudu** AIR 2016 SC 3282 and contends that he will consider his remedies against dismissal of application under Order VII Rule 11 of the CPC.

8. It is not as if this court is proceeding to frame issues before adjudicating the application under Order VII Rule 11 of the CPC. As far as this Court is concerned, the application has been dismissed and further proceedings in the suit cannot be deferred till the aspect of Order VII Rule 11 of the CPC is appealed till the last Court.

9. Moreover, in the order dated 11th November, 2016 it was made clear that the issues would be framed if the application under Order VII Rule 11 of the CPC is not allowed.

10. It may also be recorded that having heard the counsels today, framing of issues by this Court will not take much time. However if the suit is adjourned for framing of issues, again the entire file will have to be gone into and the counsels will have to be heard.

11. On the pleadings of the parties, the following issues are framed:-

- (i) Whether the document dated 25th February, 1969 amounts to creation of an Hindu Undivided Family and divests the father of the parties from exclusive ownership of the property no.A-345,



Defence Colony, New Delhi? OPP

- (ii) If the issue no.(i) is decided in favour of the plaintiff, whether the document dated 25th February, 1969 has not been acted upon and if so to what effect? OPD-1.
 - (iii) Whether the document dated 21st June, 2005 is the validly executed last Will of the father of the parties? OPD-1
 - (iv) Whether the suit claim is within time? OPP
 - (v) Whether the plaintiff has not paid the appropriate court fees and if so to what effect? OPD-1
 - (vi) Whether the amended plaint has been signed by a duly authorised person on behalf of the plaintiff and if not to what effect? OPPr.
 - (vii) Relief.
- 12. No other issues arises or is pressed.
 - 13. The counsel for the defendant no.1 seeks liberty to file documents.
 - 14. The senior counsel for the plaintiff has no objection.
 - 15. The parties may file their documents within two weeks.
 - 16. List of witnesses be also filed within the said time.
 - 17. The plaintiff to file affidavits by way of examination-in-chief of all his witnesses within eight weeks of today.
 - 18. Option for recording of evidence before the Court Commissioner has been accepted by the counsel for the plaintiff.
 - 19. The counsel for the defendant no.1 objects.
 - 20. Once the plaintiff is willing to bear the costs of the Commission subject to final order as to costs in the suit, the objection of the defendant no.1 does not come in the way, especially when the Joint Registrars are



burdened with recording of evidence.

21. Accordingly, Mr. Dinesh Dayal, Additional District Judge (Retd.) (Ph. No.9810100200) is appointed as the Court Commissioner to record evidence in the suit.

22. The fee of the Court Commissioner, besides out of pocket expenses is tentatively fixed at Rs.1,00,000/- to be initially borne by the plaintiff subject to final orders as to costs in the suit.

23. The Court Commissioner is requested to record the evidence within the Court Complex and to complete the same within one year of the date of first appearance of the parties before him. He is granted liberty to have the matter placed before the Court, if any of the parties are found delaying recording of the evidence.

24. The Registry is directed to send the file of the suit at the place and time fixed by the Court Commissioner for recording of evidence.

25. The counsels to appear before the Court Commissioner with prior appointment on or about 17th April, 2017.

26. To be listed after recording of evidence is completed.

27. IA No.14295/2016 of the plaintiff under Order XI Rules 1& 14 CPC is disposed of as not pressed in view of developments above.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 15, 2017

‘pp/gsr/bs’

(corrected & released on 27th February, 2017)