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

+ **CS(OS) 441/2016**

AKHIL KUMAR VASHNEY & ANR Plaintiffs

Through: Mr. Ashish Kapur and Ms. Vandana
Rani, Advs.

versus

RAJIV KUMAR & ANR Defendants

Through: Mr. R.K. Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.04.2018**

IA No.3959/2018 (of the plaintiffs under Order VI Rule 16 of the CPC).

1. The counsel for the plaintiffs states that the original sole defendant, in pursuance to the amendment of the plaint allowed impleading the wife of the said defendant (who is now the defendant no.1) as defendant no.2 has carried out amendments in his written statement beyond the amendment. This application has been filed for the said purpose.

2. The counsel for both the defendants states that he will file fresh written statement of the defendant no.1 to the amended plaint.

3. Finding that the defendants no.1&2 though husband and wife have filed separate written statements, I have enquired from the counsel for the plaintiffs as to the prejudice suffered by the plaintiffs by the unauthorised amendment by the defendant no.1 to his written statement especially when the defendant no.2 in her written statement must have taken the said pleas.

4. The counsel for the plaintiff though states that there are inconsistencies in the written statement of the defendants no.1&2 but

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withdraws this application.

5. Dismissed as withdrawn.

IA No.5683/2017 (of the plaintiffs under Section 151 CPC).

6. The plaintiffs seek inspection of the suit record by a handwriting expert.

7. Issues have not been framed in the suit and the application is premature and is dismissed.

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8. The counsel for the plaintiffs states that no replication is required to the written statements of the defendants.

9. The counsel for the defendants seeks adjournment stating that he is not prepared for framing of issues and is not even carrying his complete file.

10. For such unpreparedness of the counsel, suits cannot be adjourned. Request for adjournment is rejected.

11. The counsel for the defendants then states that the valuation of the property, of which partition is sought, is only Rs.83,00,000/- and this suit is below the minimum pecuniary jurisdiction of this Court.

12. The plaintiffs in the plaint are found to have valued the suit for the purposes of court fees and jurisdiction at Rs.2.20 crores and the question whether the value of the property is Rs.2.20 crores or Rs.83,00,000/-, raises a disputed question of fact and cannot be a ground for rejection/return of the plaint.

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

- (i) Whether the father of the two plaintiffs had transferred his right, title, share and interest in property no.A-88, Hardevpuri,

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Shahadara, Delhi in favour of the defendant no.1? OPD

- (ii) Whether the suit is incorrectly valued for the purposes of court fees and jurisdiction and if so to what effect? OPD
- (iii) If the plaintiffs succeed in issue No.(i), to *mesne* profits in what amount are the plaintiffs entitled to from the defendants for exclusive use and occupation by the defendants of the property? OPP
- (iv) Relief.

14. It is made clear that *mesne* profits if any found due to the plaintiffs from the defendants shall be deductible out of the share of the defendants in the property.

15. It is clarified that in view of the admission in the written statements of the defendants, of the father of the plaintiffs having a share in the property and having transferred the same to the defendant no.1, no need to frame any issue qua the relief claimed by the plaintiffs, of declaration as illegal and non-est of the Sale Deed executed by the defendant no.1 in favour of the defendant no.2 of the entire property, is felt inasmuch as if the defendants fail to prove transfer by the father of the plaintiffs of his share in the property to the defendant no.1, the Sale Deed executed by the defendant no.1 in favour of the defendant no.2 can only be with respect to the share of the defendant no.1 and not with respect to the share of the plaintiffs. It is further clarified that if the defendants succeed in issue no.(i), the plaintiffs will have no share in the property and else, the plaintiffs and the defendant no.2 will be the owners in equal share of the property inasmuch as it is not in dispute that the paternal grandfather of the plaintiffs and the father of the

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defendants, were the owners of the property and on whose demise the plaintiffs together and the defendants have one half share each in the property.

16. No other issue arises or is pressed.
17. The parties to file their list of witnesses within 15 days.
18. The onus of the main issue being on the defendants, the defendants to lead their evidence first.
19. The defendants to file affidavits of themselves and their witnesses within six weeks.
20. Option of having the evidence recorded on commission has not been accepted.
21. List before the Joint Registrar on 22nd May, 2018 for fixing the dates of trial.

RAJIV SAHAI ENDLAW, J

APRIL 03, 2018

‘pp’..

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