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

+ CS(OS) 1822/2015

MEGH SHYAM SHARMA & ORS

..... Plaintiff

Through: Ms. Heena Sharma, Adv.

versus

VINOD KUMAR SHARMA & ORS

..... Defendant

Through: Mr. Siddhant Aggarwal, Adv.

CORAM:

**SH. VIJAY SHANKAR (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

% **12.04.2019**

I.A.No. 5511/2018 under Section 151 CPC filed on behalf of the defendant no.1, 3 & 4

By way of present order, I shall dispose of application under Section 151 CPC of the defendant no.1, 3 & 4. In the present application, the defendant no.1, 3 & 4 have prayed that the evidence by way of affidavit of witness, namely, Sh. Megh Shyam Sharma may kindly not be admitted into evidence.

Brief facts necessary for just adjudication of the present application, as stated in the application are that the plaintiffs have filed the evidence by way of affidavit of Sh. Megh Shyam Sharma and the same is inadmissible in evidence as same is not properly verified in accordance with law. The

evidence by way of affidavit contains allegations, which are beyond pleadings of parties to the suit. The allegations made in para no. 3 to 9, 11, 12 & 14 of evidence by way of affidavit of Sh. Megh Shyam Sharma are beyond pleadings. Hence, the evidence by way of affidavit of Sh. Megh Shyam Sharma cannot be admitted into evidence unless the allegations made beyond pleadings are expunged from the aforesaid evidence by way of affidavit.

The plaintiffs have contested the present application by filing reply wherein they have denied the contents of the aforesaid application and prayed for dismissal of the same with cost.

Arguments already heard on the aforesaid application of the defendant no.1, 3 & 4. Perused the material available on record.

The present suit for declaration, partition, permanent and mandatory injunction has been filed by the plaintiffs against the defendants. In the present case, the issues were framed vide order dated 27/07/2017. In the present case, the plaintiffs have filed the evidence by way of affidavits of three witnesses including the evidence by way of affidavit of the plaintiff no.1 Sh. Megh Shyam Sharma. It is the contention of the defendant no.1, 3 & 4 that the evidence by way of affidavit of the aforesaid witness is not properly verified in accordance with law and para no. 3 to 9, 11, 12 & 14 of evidence by way of affidavit of Sh. Megh Shyam Sharma are beyond pleadings. On the other hand, it is the contention of the plaintiffs that the evidence by way of affidavit of plaintiff no.1 is duly verified as per law and the statements made in para no. 3 to 9, 11, 12 & 14 of evidence by way of affidavit of Sh. Megh Shyam Sharma are relevant and germane to prove the facts in issue.

It was held by Hon'ble Supreme Court of India in case titled as "Bipin Shantilal Panchal v. State of Gujarat and Another" {(2001) 3 SCC 1} that:

"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)"

In the present case, PW Sh. Megh Shyam Sharma is yet to be examined and his evidence by way of affidavit is yet to be tendered. It has already been held by the Hon'ble Supreme Court in *Bipin Shantilal Panchal (supra)* that whenever an objection is raised during evidence stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection subject to such objections to be decided at the last stage in the final judgment. Considering the facts, circumstances, submissions made and in view of the law laid down in *Bipin Shantilal Panchal (supra)*, the aforesaid application of the defendant no.1, 3 & 4 is dismissed. No order as to costs. However, the defendant no.1, 3 & 4 are at liberty to raise the aforesaid objections at the time of examination-in-chief of aforesaid witness.

IA stands disposed of.

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At joint request, re-notify the matter for plaintiffs' evidence on **13th August, 2019.**

**VIJAY SHANKAR (DHJS)
JOINT REGISTRAR (JUDICIAL)**

APRIL 12, 2019/nk