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

+ CS(COMM) 544/2017 & IAs No.9443/2017 (u/O XXXIX R-1&2 CPC), 13087/2017 (of D-2&4 u/O XXXIX R-4 CPC) & 3831/2018 (u/O V R-20 CPC)

BABE BUILDTECH PVT. LTD. Plaintiff
Through: Mr. Umesh Mishra, Adv.

Versus

SAMARJEET & ORS Defendants
Through: Mr. Bharat Gupta, Adv. for D-2&4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.03.2018

1. This order is in continuation of the earlier order dated 19th January, 2018.
2. The defendants No.1&3 remain unserved with the summons issued by ordinary process to defendant No.1 being returned with the report that “he is not residing at the address given” and the report qua the defendant No.3 being that “no such person is available at the said address”.
3. The counsel for the plaintiff states that the *dasti* summons also could not be served on the defendants No.1&3.
4. The plaintiff has filed IA No.3831/2018 under Order V Rule 20 of the Code of Civil Procedure, 1908 (CPC) for substituted service of defendants No.1&3.
5. During the hearing, it is informed that the agreement of sale of which specific performance is claimed in the present suit is by the defendant No.1

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in favour of the plaintiff and the defendant No.1 has by separate sale deeds in favour of the defendants No.2 to 4 sold different parts of the property, being agricultural land, to the defendants No.2 to 4.

6. In the circumstances, it appears that the defendant No.1 is no longer interested in contesting the suit and is permitted to be served by publication.

7. As far as the defendant No.3 is concerned, though there is an injunction operating against her but she has chosen not to appear.

8. The counsel for the defendants No.2 &4, on enquiry, states that the defendant No.3 is not connected in any way to the defendants No.2 & 4.

9. The counsel for the plaintiff, on enquiry, states that the order of *ex-parte* injunction has been served on defendant No.3 through speed post at the same address which is given and which is the address of the defendant No.3 in the sale deed executed by the defendant No.1 in favour of the defendant No.3.

10. In the aforesaid view, the defendant No.3 is also permitted to be served by publication.

11. The defendants No.1&3 be served by publication in the newspapers “Times of India” and “Nav Bharat Times” and also through the office of the Sub-Divisional Magistrate (SDM) having jurisdiction over the land subject matter of sale deed by the defendant No.1 in favour of the defendant No.3 returnable on 18th May, 2018 before the Joint Registrar.

12. In the aforesaid state of affairs, the counsel for the plaintiff and the counsel for the defendants No.2&4 have also been heard on the application for interim relief.



13. The counsel for defendants No.2&4, on enquiry, whether the defendants No.2&4 are desiring to further sell the property, replies in the negative but states that mutation in pursuance to the sale deed in favour of the defendants No.2&4 is held up.

14. IA No.9443/2017 of the plaintiff under Order XXXIX Rules 1&2 of CPC and IA No.13087/2017 of the defendants No.2&4 under Order XXXIX Rule 4 of the CPC are disposed of by permitting mutation of the land from the name of the defendant No.1 to the names of defendants No.2 to 4 respectively and with liberty to the defendants No.2 to 4 to, as and when desire to deal with the property or create any rights therein, apply to this Court for the same.

15. List before the Court on 5th September, 2018 for framing of issues, if any.

RAJIV SAHAI ENDLAW, J.

MARCH 20, 2018

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