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

+ **CS(OS) 362/2021 & I.A. 9678/2021**

SAGAR GUPTA AND OTHERS

..... Plaintiff

Through: Mr.Namit Saxena, Mr.Rohit Pandey
& Mr.Vaibhav Maheshwari,
Advocates for Plaintiffs.

versus

SAVITA MITTAL AND OTHERS

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

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05.08.2021

(hearing through Video Conferencing)

None is present on behalf of the defendants with it having been submitted on behalf of the plaintiff that the affidavit of advance service has been filed, which is also so borne out to be correct as per the record.

The suit filed by the plaintiffs seeks the grant of partition in respect of movable and immovable properties apart from seeking a temporary injunction seeking a restraint against the defendant nos. 1 to 4 from interfering the uninterrupted peaceful use and occupation in respect of movable and immovable properties as detailed in paragraph 2 of the plaint apart from seeking a restraint from creation of any third party interest or alienation in the movable and immovable properties as detailed in paragraph 2 of the plaint.

The averments made through the plaint state *inter alia* to the effect



that the plaintiff no.3 is the second wife of late Sh.Naresh Gupta @ Naresh Kumar Mittal with averments that have been made in the plaint vide paragraph 14 *inter alia* to the effect that late Sh.Naresh Gupta @ Naresh Kumar Mittal had married plaintiff no.3 after obtaining the consent of the defendant no.1 and that the marriage of late Sh.Naresh Gupta @ Naresh Kumar Mittal was well within the knowledge of the defendant no.1 and out of the wedlock with the defendant no.1, the legal heirs are stated to be Savita Mittal, Rashmi Mittal, Amit Mittal and Sumit Mittal and the legal heirs pursuant to the marriage with the plaintiff no.3 are stated to be the plaintiff no.3 herself and the other two plaintiffs i.e. Sagar Gupta and Nitin Gupta as arrayed to the plaint.

In reply to a specific Court query, learned counsel for the plaintiff submits that late Sh.Naresh Gupta @ Naresh Kumar Mittal had married the plaintiff no.3, Ms.Anju Gupta in the year 1989.

Learned counsel for the plaintiff submits through the plaint that at the time of demise of Sh.Naresh Gupta @ Naresh Kumar Mittal due to his ill health, he had been residing with the defendants and had expired on 11.05.2021 due to covid-19 and by taking undue advantage of his mobile phone, the defendants without the consent of the plaintiffs generated an OTP. It has been alleged by the plaintiffs that the properties as detailed in paragraph 13 of the plaint, which are as under:-

- (i) C-68, Jain Colony, Rajiv Nagar Extension, Bhalaswa Dairy.
- (ii) D-34, 35, 36, Jain Colony, Rajiv Nagar Extension, Bhalaswa Dairy.
- (iii) C-43, Khasra No.578, Jain Colony, Rajiv Nagar Extension, Bhalaswa Dairy, had been dishonestly taken over by the defendants.

The plaintiffs submit that they had also served a legal notice dated



03.06.2021 on the defendants for disclosure of the personal accounts as well as the movable and immovable assets, to which defendants are stated to have responded vide a reply placed on record as Annexure-P6, a perusal of which indicates that the plaintiffs were denied by the defendants in relation to any rights that the plaintiffs had with it having been submitted that the relations between the plaintiff nos. 1 & 2 with the deceased were the **business relations** with it having also been submitted that the contention that the deceased had married with the plaintiff no.3 during the lifetime of the defendant no.1 was not in consonance with law.

In any event, it has been contended by the plaintiffs that the plaintiff nos. 1 & 2 are the offspring of late Sh.Naresh Gupta @ Naresh Kumar Mittal. In the circumstances, it is considered appropriate to issue summons for settlement of issues along with notice of I.A. 9678/2021 to the defendant, which is thus, directed to be issued on taking of steps by the plaintiff, process being returnable for the date 07.10.2021.

Written statement of the defendant and the response to I.A. 9678/2021 along with the affidavit of admission/denial of documents be filed within a period of 30 days of the receipt of the summons for settlement of issues.

Replications thereto, if any, be also filed by the plaintiff within a period of two days thereafter along with the affidavit of admission/denial of documents.

The matter be re-notified for 07.10.2021.

ANU MALHOTRA, J

AUGUST 5, 2021
'Neha Chopra'