



\$~12&27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(OS) 1638/2009 & IA No.11499/2016 (u/O XXXIX R-2A CPC)
RAM NIWAS Plaintiff

Through: Mr. Anil Sharma, Mr. Kunal Nath &
Mr. Jaskaran Singh, Adv.

Versus

JYOTI PRASAD AND OTHERS Defendants

Through: Mr. P.K. Saxena, Adv. for D-2&4.

AND

+ TEST.CAS. 7/2011 & IA No.14710/2017 (for modification of the
order dated 15th July, 2016)

RAJESH GARG Petitioner

Through: Mr. P.K. Saxena, Adv.

Versus

STATE & ORS Respondents

Through: Mr. Anil Sharma, Mr. Kunal Nath &
Mr. Jaskaran Singh, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.04.2018**

1. Both counsels seek adjournment on the ground of the parties being engaged in settlement talks.
2. It is found that this state of affairs has been continuing for a sufficiently long time, with no proceedings happening in either of the matters.
3. The proceedings cannot be kept pending in this fashion and settlement if any, ought to have been arrived at by now.
4. The counsels have thus been asked to proceed with the matters.



5. The counsel for the petitioner in Test Case No.7/2011 states that IA No.14710/2017 of the petitioner therein for modification of the order dated 15th July, 2016 closing the evidence of the petitioner therein is for consideration. He argues that the evidence came to be closed only for the reason of the petitioner having not filed affidavits by way of examination-in-chief in view of settlement talks.

6. Mr. Jaskaran Singh, Advocate who till now was appearing for the plaintiff in CS(OS) No.1638/2009 and who is for the contesting respondent in Test Case No.7/2011 states that his vakalatnama is not on record and Mr. Anil Sharma, Advocate is the main counsel and is not available. While this order is being dictated, Mr. Jaskaran Singh, Advocate also has left and Mr. Kunal Nath, Advocate now appearing, again makes the same request. At this stage, Mr. Anil Sharma, Advocate has also come. Mr. Anil Sharma, Advocate states that he has no objection to the application being allowed.

7. IA No.14710/2017 is allowed.

8. Last opportunity is granted to the petitioner in Test Case No.7/2011 to, within two weeks of today, file affidavits by way of examination-in-chief of the witnesses sought to be examined, failing which the right to file affidavits shall stand closed.

9. On enquiry, it is stated that no list of witnesses has been filed and besides the petitioner, both the attesting witnesses shall be examined and no other witness is to be examined.

10. The affidavits of all the witnesses sought to be examined be filed as aforesaid within two weeks. If more than one attesting witness is to be examined, all should be produced on the same day for cross examination.



11. IA No.14710/2017 is disposed of.
12. I have perused the issues framed in the suit to gauge whether there are any other issues in the suit, which is for partition, besides that on the aspect of the Will set up in the Test Case No.7/2011.
13. The counsel for the plaintiff in the suit at this stage states that if the petitioner in the Test Case No.7/2011 succeeds in proving the, Will then the partition suit will have to be dismissed.
14. None else appears for any of the defendants except for defendants no.2 and 4 and of which, defendant no.2 is the petitioner in the Test Case No.7/2011 and the counsel for the defendant No.2 states that the interest of defendant no.4 is the same as of the defendant no.2.
15. However, a perusal of the issues framed in the suit shows an issue also framed with respect to the properties having been purchased from joint family funds. The onus of the said issue is on the plaintiff.
16. In view of the statement aforesaid of counsel for the plaintiff in the suit, it is made clear that if the petitioner in Test Case No.7/2011 proves the Will, of which letters of administration is sought, the suit for partition will stand dismissed and if the petitioner in Test Case No.7/2011 fails in proof of the Will set up therein, the shares of the parties in the properties will devolve in accordance with the Hindu Succession Act, 1956.
17. Issues in the suit are ordered to be amended accordingly.
18. In the light of the above, the two proceedings are consolidated for the purpose of trial with the Test Case No.7/2011 being the lead case and the petitioner in Test Case No.7/2011 to lead evidence first.



19. On request, Mr. A.S. Yadav, District Judge (Retd.) (Mob.No.9910384646) is appointed as the Court Commissioner to record evidence.
20. The Court Commissioner is requested to record evidence within the Court Complex and to complete the same within six months 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.
21. The fee of the Court Commissioner, besides out of pocket expenses, is fixed at Rs.1 lakh, to be shared by the petitioner in Test Case No.7/2011 on the one hand and the contesting respondents in the Test Case No.7/2011 on the other hand.
22. 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.
23. The parties to appear before the Court Commissioner within four weeks of today for commencement of recording of evidence.
24. In view of the above, IA No. 11499/2016 in CS(OS) No.1638/2009 is dismissed as not pressed.
25. List after the recording of evidence is completed.

RAJIV SAHAI ENDLAW, J

APRIL 02, 2018

‘gsr’..

CS(OS) 1638/2009 & TEST.CAS. 7/2011

Page 4 of 4