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

+ **CS(OS) 509/2022**

SAHIL MARWAH & ANR.Plaintiffs

Through: **Mr. Abhey Narula, Adv.**

versus

ONKAR SINGH MARWAH & ORS.Defendants

Through: **Mr. Varun Sarin, Ms. Kanak Bose
and Ms. Parul Dutta, Adv. for D-1
(through vc)
Mr. M. P. Sahay, Adv. for D-2
(through vc)
Mr. Ujas Kumar, Adv. for D-4**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **29.04.2025**

I.A. 10734/2025 (Application for exemption from filing certified copies of the orders dated 23.07.2024 and the order dated 27.03.2025)

1. The present application has been filed seeking exemption from filing certified copies of the orders dated 23.07.2024 and 27.03.2025.
2. In view of the averments made in the application, the present application is allowed.
3. Accordingly, the application stands disposed of.

I.A. 10733/2025 (Application under Order XIV Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 on behalf of the Plaintiffs for amendment of issues)

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4. The present application has been filed by the Plaintiffs seeking the following reliefs:

“a. Pass appropriate orders and directions framing an additional issue No. (viii) *Whether the Plaintiffs are entitled to Partition of the property No. 31, Hanuman Road, New Delhi* **and** direct that the present Suit, CS(OS) No. 574 of 2022 and Test Case No.17 of 2023 may be tried together.”

(Emphasis supplied)

5. It is stated in the application that this Court inadvertently did not frame an issue with respect to the relief of partition and the said proposed additional issue has been set out in the prayer clause (a) of the captioned application.

5.1. It is further stated that the Plaintiffs have not consented that the evidence will first be recorded and completed in TEST.CAS. 17/2023, as recorded in the order dated 27.03.2025.

6. Learned counsel for the Plaintiffs, however, fairly states that in case the subject Will dated 02.08.2019 is held to be invalid in the TEST.CAS. 17/2023, the reliefs sought in the underlying plaint would be substantially answered in favour of the Plaintiffs; and it would obviate the necessity of leading evidence.

7. Issue notice. Learned counsel for Defendant No. 1, Defendant No. 2 and Defendant No. 4 accept notice.

8. Learned counsel for Defendant No. 1 states that the additional issue proposed by the Plaintiffs is superfluous as it is not really an ‘issue’ but merely a relief.

8.1. He further states that the direction for first recording the evidence in TEST.CAS. 17/2023 is acceptable to Defendant No. 1.

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9. Learned counsel for Defendant No. 2 states that in view of the order dated 23.07.2024, the second direction sought in this application for trying the suits and TEST CASE together is in essence agitating the same relief, which has already been declined by this Court.

10. This Court has considered the submissions of the parties and perused the records.

11. To obviate any ambiguity, the additional issue as proposed by the Plaintiffs is hereby allowed and it shall be treated as issue no. (viii), which reads as under:

“(viii) Whether the Plaintiffs are entitled to partition of the property No. 31, Hanuman Road, New Delhi?”

12. Having perused the record, it is further directed that in case the Will dated 02.08.2019 is held to be invalid in TEST.CAS. 17/2023, the Plaintiffs would have legal right to seek partition of the subject immovable property as per the law of intestate succession.

13. However, with respect to the second relief sought by the Plaintiffs with respect to trial of the two (2) civil suits including the underlying suit and the TEST.CAS. 17/2023 together, this Court is not persuaded by the said prayer and the order dated 23.07.2024 is reiterated.

14. At this stage, learned counsel for the Plaintiffs states that he is not pressing his relief seeking trial of the two (2) suits and the TEST.CAS. 17/2023 together. He states that the Plaintiffs herein will abide by the direction recorded at paragraph ‘8’ of the order dated 27.03.2025.

15. The statement of the plaintiffs is taken on record and they are bound to the same.

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16. It is further clarified that after the evidence in the TEST.CAS. 17/2023 has been recorded and completed the said testamentary case will be placed before the Court for final disposal. This clarification has been issued at the request of the parties.

17. With the aforesaid directions, the application stands disposed of.

APRIL 29, 2025/msh/sk

MANMEET PRITAM SINGH ARORA, J

[Click here to check corrigendum, if any](#)

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