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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(OS) 627/2018, IA No.16691/2018 (u/O XXXIX R-1&2 CPC) &
IA No.6208/2019 (u/O VI R-17 CPC)
RAJESH KHULLAR AND ANR. Plaintiffs

Through: Ms. Shyel Trehan & Mr. Raghav
Anand, Advs.

Versus

RAKESH KHULLAR AND ANR. Defendants

Through: Mr. Jaspreet Singh Rai, Adv.
AND

+ TEST.CAS. 58/2019
VARUN KHULLAR

.... Petitioner

Through: Mr. Jaspreet Singh Rai, Adv.

Versus

STATE AND ORS. Respondents

Through: Ms. Shyel Trehan & Mr. Raghav
Anand, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.09.2019**

1. The application, being IA No.6208/2019 of the plaintiffs in CS(OS) No.627/2018, for amendment of the plaint, is pending consideration.
2. The counsel for the plaintiffs and the counsel for the defendants have been heard.
3. It is not the contention of the counsel for the defendants that any admissions made are being withdrawn. Rather, the pleas sought to be taken by way of amendment are denied on merits.
4. On enquiry as to the relevance of the pleas relating to the status / possession of the property, attention is drawn to the order dated 6th December, 2018.



5. The suit is at initial stage. Issues have not been framed as yet. Rather, it is found that summons of the suit on 25th April, 2019 were issued on the basis of the amended plaint only. That being the position, the Joint Registrar on 29th April, 2019 ought not to have issued notice of IA No.6208/2019.

6. IA No.6208/2019 in CS(OS) No.627/2018 is thus disposed of.

7. There is already an interim order in Test Cas No.58/2019. In addition thereto, an interim relief directing the defendants in the suit to deposit the rent being realized from the property of which partition is sought, is claimed.

8. The counsel for the defendants states that there is no tenant in the property. Recording the same, IA No.16691/2018 under Order XXXIX Rules 1 & 2 of the CPC in CS(OS) No.627/2018 is disposed of.

9. The counsel for the defendants states that written statement shall be filed within two weeks.

10. Replication within four weeks thereafter as sought.

11. The issue for consideration in the suit as well as in the testamentary case would be the same i.e. the validity of the document claimed to be the Will of the common predecessor of the parties. Pleadings in Test Case are complete. It is thus felt that there is no need for duplication of proceedings in the suit for partition.

12. Needless to state that if the document, on the basis of which Letters of Administration is sought in the testamentary case, is proved to be the validly executed last Will of Janak Raj Khullar, the suit for partition will stand dismissed and conversely, if the document is not proved to be the Will, it is



not in dispute that the two plaintiffs and the defendant no.1 in the suit would have one-third share each in the suit property.

13. Both counsels agree.

14. Thus the order aforesaid for completion of pleadings in the suit is recalled.

15. Issues have already been framed in the testamentary case and it is stated that examination-in-chief of petitioner in the Test.Cas. has also been recorded.

16. I have enquired, whether any additional issues are required to be framed in the Test.Cas.

17. Both counsels reply in the negative.

18. It is found, that there is no order in the Test.Cas. for filing list of witnesses.

19. The counsel for the petitioner in the Test.Cas. however states he has filed his list of witnesses.

20. The counsel for the plaintiffs in the suit, who are respondents no.3 and 4 in the Test. Cas., may file their list of witnesses within 15 days.

21. Option given, of having evidence recorded on commission has been declined.

22. If more than one attesting witness to the document claimed to be the Will is sought to be examined, affidavit by way of examination-in-chief of all the witnesses be filed together and all to be tendered together for cross-examination.

23. The counsel for the petitioner in Test.Cas. states that only one attesting witness out of two is alive but affidavit by way of examination-in-



chief of the said witness also has not been filed.

24. It is expedient that before the cross-examination of the petitioner in the Test.Cas. is recorded, the affidavit by way of examination-in-chief of the said attesting witness is also filed. The same be filed within three weeks as sought.

25. If any other witness mentioned in the list of witnesses of the petitioner in Test.Cas. is to be examined, the affidavit by way of examination-in-chief of the said witness/s be also filed within the said three weeks.

26. List before the Joint Registrar on 31st October, 2019, for scheduling the dates for cross-examination of the witnesses of the petitioner in the Test.Cas. by the counsel for the objectors / respondents no.3 and 4 therein.

27. List after recording of evidence is concluded.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 16, 2019

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