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

+ **CS(OS) 593/2012**

RAVINDER KAUR CHAWLA

..... Plaintiff

Through: **Mr. Aviral Tiwari, Adv.**

Versus

IQBAL SINGH SABHARWAL & ORS

..... Defendants

Through: **Mr. Neeraj Malhotra, Sr. Adv. with
Mr. Ashish Dixit and Mr. Rishabh
Tripathi, Advs. for D-2.**

**Mr. Abhinav Tandon and Mr.
Anupam Roy, Advs. for D-4.**

Mr. Subhash Chand, Adv. for D-5.

Mr. Saleem Hasan, Adv. for D-7.

Mr. Manish Kumar, Adv. for D-10.

**Mr. R.V. Sinha and Mr. A.S. Singh,
Advs. for D-11.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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07.03.2018

IAs No.8022/2017 (of D-2 for examination of other witnesses before D-2 himself) & 9449/2017 (of D-2 for examination of D-2 via video conferencing)

1. The senior counsel for the applicant/defendant No.2 and the counsel for the plaintiff have been heard.
2. A perusal of the issues framed on 21st July, 2014 and 6th February, 2015 in this suit for partition shows that the outcome of the suit *inter alia* revolves around a document claimed by the applicant/defendant No.2 to be validly executed last Will of Dr. Kartar Singh Sabharwal.

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3. I have enquired from the senior counsel for the applicant/defendant No.2, whether the witnesses to the Will have been examined.
4. The senior counsel for the applicant/defendant No.2 states that the witnesses to the Will have died and the applicant/defendant No.2 will have to trace out the persons who can identify the signatures of the witnesses of the Will. It is however stated that the Will is registered.
5. The factum of registration of the Will, at this stage, is of no avail.
6. I have enquired from the senior counsel for the applicant/defendant No.2 that if the applicant/defendant No.2 has not named the witnesses in the list of witnesses, how can the applicant/defendant No.2 be today permitted to trace out the said witnesses and ought to have done the said exercise in the last six years, since when the suit is pending. Without the witnesses being named in the list of witnesses, no summon to such witnesses can be issued and at best it will be open to the applicant/defendant No.2 to on his own bring the said witnesses before the Joint Registrar and to examine them, if agreed to by the counsel for the plaintiff.
7. No answer is forthcoming.
8. On enquiry, it is informed that the evidence of the applicant/defendant No.2 is pending since May, 2015 and the applicant/defendant No.2 has examined two official witnesses till now.
9. The applicant/defendant No.2 cannot be permitted to examine himself before the witnesses to the Will, if intending to produce the said witnesses. In a proceeding entailing such an issue the witnesses to the Will are required to be examined before the person propounding the Will. Reference can be
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made to ***Priyam Batra Vs. Navketan Cooperative Group Housing Society Ltd.*** MANU/DE/7678/2017 and ***Walter D'Souza Vs. Anita D'Souza*** 2014 SCC OnLine Bom 1671.

10. List before the Joint Registrar on 4th May, 2018 for recording the evidence of the witnesses to the Will, if any produced by the applicant/defendant No.2. If no witness/es to the Will are produced on the said date, the right of the applicant/defendant No.2 to examine the said witness/es or witnesses identifying their signature shall stand closed and the applicant/defendant No.2 would be entitled to examine himself and Poonam Kaur Sethi only as witnesses. The applicant/defendant No.2 shall also then be entitled to examine himself through video conferencing in accordance with the protocol of this Court.

11. Though the senior counsel for the applicant/defendant No.2 has stated that witness from Municipal Corporation of Delhi and Station House Officer, Police Station, Patel Nagar, New Delhi are also to be examined but they are not found to be relevant for the purposes of the issues framed in the suit.

12. With the aforesaid, the applications are disposed of.

RAJIV SAHAI ENDLAW, J.

MARCH 07, 2018

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