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

+ CS(OS) 743/2012

RAJAT PANDHI

..... Plaintiff

Through: Mr. Umesh Suri, Adv.

versus

SANDEEP KAWLRA & ORS.

..... Defendants

Through: Mr. K.S. Mahadevan and Ms. Swati

Bansal, Advs. for D-3 to 5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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17.05.2018

1. This order is in continuation of the earlier order dated 9th January, 2018.
2. Mr. K.S. Mahadevan, Advocate for defendants no.3 to 5 states that he has since filed documents under list of documents dated 15th May, 2018 and comprising *inter alia* of photocopy of the Will of late Shri Hans Raj Kawlra and the original Will of Sumitra Kawlra, unmarried daughter of Hans Raj Kawlra.
3. On further enquiry, it is stated that the Will of Hans Raj Kawlra is in favour of only five out of the eight children and the plaintiff as per the amended Memo of Parties dated 23rd January, 2018, is the heir of one of the children of Hans Raj Kawlra who was excluded from the Will and the plaintiff thus has no share in the property.
4. Only photocopy of the Will of Hans Raj Kawlra having been filed before this Court, whereabouts of the original have been questioned.
5. The counsel for the defendants no.3 to 5 then states that the original is not available but Estate Duty proceedings had taken place with respect to the CS(OS) 743/2012

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estate of Hans Raj Kawlra and probably the original has been deposited there and efforts in that regard are being made.

6. The counsel for the plaintiff states that as per the photocopy of the Will filed there is only one witness and the said document does not constitute a Will.

7. The counsel for the defendants no.3 to 5 states that the Will is also signed by Dr. K.L. Sehgal who has certified the physical and mental fitness of Hans Raj Kawlra and has also certified that Hans Raj Kawlra signed the Will in his presence. Attention in this regard is also invited to the affidavit of Dr. K.L. Sehgal filed before the Municipal Corporation of Delhi (MCD).

8. Though the documents have been filed belatedly but the same are taken on record.

9. The counsel for the plaintiff states that Lal Chand Kawlra, one of the sons of Hans Raj Kawlra in whose favour also the Will is alleged to have been made, died intestate and without marrying or having any children and the plaintiff, being his sibling would have a share out of the share of the said Lal Chand Kawlra at least.

10. However the counsel for the plaintiff is not aware whether the mother of the said Lal Chand Kawlra was alive at the time of his demise inasmuch as if she was alive, would inherit his share and / or whether Hans Raj Kawlra, the father of the plaintiff was alive at the time of demise of Lal Chand Kawlra inasmuch as even in the event of the mother having predeceased Lal Chand Kawlra, his living siblings only will inherit his share.

11. The counsel for the defendants no.3 to 5 then states that the defendant no.7 having transposed himself as the plaintiff, is not entitled to pursue the suit without making any pleadings of his own.

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12. Transposition of a defendant as plaintiff is permitted in a partition suit and no fresh pleadings are required.
13. There is thus no merit in the said objection.
14. On the pleadings of the parties, the following issues are framed:-
 - (i) Whether the document dated 28th December, 1967 is the validly executed last Will of Shri Hans Raj Kawlra and if so to what effect? OPD 3 to 5.
 - (ii) Whether the document dated 21st December, 2006 is the validly executed last Will of Ms. Sumitra Kawlra, daughter of Hans Raj Kawlra and if so to what effect? OPD 3 to 5
 - (iii) Whether the document dated 20th November, 2012 is a validly executed last Will of Mohinder Nath Kawlra, son of Hans Raj Kawlra? OPP
 - (iv) What are the respective shares if any, of the parties in the property of which partition is sought? OPPr
 - (v) Relief.
15. No other issue arises or is pressed.
16. The parties to file their list of witnesses within 15 days.
17. The onus of the main issues being on the defendants no.3 to 5, the defendants no.3 to 5 to lead evidence first.
18. The defendants no.3 to 5 to file affidavits by way of examination-in-chief of their witnesses within six weeks.
19. If more than one witness to any of the document set up as Will is sought to be examined, affidavits by way of examination-in-chief of all the witnesses be filed on the same day and all the witnesses be produced for



cross-examination on the same day.

20. Option of having the evidence recorded on commission has been declined.

21. List before the Joint Registrar on 11th July, 2018 for scheduling the dates of evidence.

22. The counsel for the plaintiff states that the costs imposed on the last date have been paid.

23. To be listed after recording of evidence is completed.

RAJIV SAHAI ENDLAW, J

MAY 17, 2018

‘pp’..

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