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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 743/2012, IA No.13054/2014 (u/O XXII R-3 r/w O-XXIII R-1(A) CPC), IA No.13055/2014 (u/O XXII R-4(4) CPC), IA No.13056/2014 (for condonation of 76 days delay), IA No.5132/2017 (u/O IX R-7 CPC), IA No.5133/2017 (for condonation of three years delay), IA No.5528/2017 (u/O XXII R-4&9 CPC), IA No.5529/2017 (for condonation of one year three months delay), IA No.5530/2017 (u/O XXII R-4&9 CPC) & IA No.5531/2017 (for condonation of two years delay)

MOHINDER NATH KAWLRA

..... Plaintiff

Through: None.

Versus

POONAM KAWLRA & OTHERS

..... Defendants

Through: Ms. Swati Bansal, Adv. for Mr. K.S. Mahadevan, Adv. for D-4 to 6.
Mr. Umesh Suri, Adv. for D-7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.01.2018

1. None appears for the plaintiff.
2. Only the counsel for the defendant no.7 Rajat Pandhi and the counsel for the defendants no.4 to 6 viz. Manish Kawlra, Kumari Vandana Kawlra and Virender Kawlra appear.
3. The counsel for the defendant no.7 states that in this suit for partition of property No.1606 and 1607, Madrasa Road, Kashmere Gate, Delhi, the plaintiff, the defendant no.1 Poonam Kawlra and the defendant no.8 Rajiv Pandhi have died and applications filed by the defendant no.7 for substitution of their legal heirs are pending. It is further stated that the



plaintiff has died leaving a Will bequeathing his share in the property to the defendant no.7 and the defendant no.7 is seeking substitution and transposition as plaintiff.

4. I have enquired from Ms. Swati Bansal, counsel for the defendants no.4 to 6, whether she has any objection to any of the said applications.

5. She states that the main counsel Mr. K.S. Mahadevan is busy in Supreme Court.

6. It is quite evident that the main counsel for the defendants no.4 to 6 is not bothered about this suit and is not interested in contesting the applications.

7. This being a partition suit, the delay in applying for substitution of legal heirs is condoned and the legal heirs as mentioned in the applications are substituted in place of the deceased parties.

8. The defendant no.7 Rajat Pandhi is also transposed as the plaintiff.

9. IAs No.13054/2014, 13055/2014, 13056/2014, 5528/2017, 5529/2017, 5530/2017 and 5531/2017 are allowed and disposed of.

10. Amended memo of parties be filed within one week.

11. IAs No.5132/2017 and 5133/2017 have been filed by defendant no.7 for setting aside of the order proceeding *ex parte* against the defendant no.7 and for condonation of delay in applying therefor.

12. In view of the aforesaid, the aforesaid applications are also allowed and disposed of.

13. The counsel for the defendant no.7 who is now the plaintiff states that though as defendant no.7 no written statement was filed but the defendant no.7 now adopts the plaint as filed by the original plaintiff and the



replication to the written statement of the defendants no.4 to 6 as filed by original plaintiff.

14. The written statement of defendants no.4 to 6 thereto is already in place.

15. The counsel for the defendant no.7 who is now the plaintiff, on enquiry states that notice of the applications for substitution aforesaid has already been served on the proposed heirs mentioned therein. In view thereof, need to issue any fresh notice to the legal heirs is not felt.

16. The non-appearing defendants are proceeded against *ex parte*.

17. I have perused the pleadings for deciphering the issues.

18. It is not in dispute that Hans Raj Kawlra was the owner of the property of which partition is sought; while according to the plaintiff / defendant no.7, the said Hans Raj Kawlra died intestate, according to the defendants no.4 to 6, he died leaving a last Will dated 28th December, 1967 whereunder he bequeathed the property equally to his four sons viz. Lal Chand Kawlra, Narender Kawlra, Virender Kawlra and Surender Kawlra and to his daughter Sumitra Kawlra.

19. An issue thus arises about the document dated 28th December, 1967 being the validly executed last Will of Hans Raj Kawlra.

20. However, for the said issue to be framed, there has to be a document before the Court and the defendants are not found to have filed any document. The said issue also in the absence of any document, does not arise and is not required to be framed.

21. Upon the same being put to Ms. Swati Bansal, counsel for the defendants no.4 to 6, she again seeks adjournment.



22. Subject to the defendants No.4 to 6 paying costs of Rs.20,000/- to the counsel for the plaintiff before the next date of hearing, adjournment is granted.

23. List on 21st March, 2018.

RAJIV SAHAI ENDLAW, J

JANUARY 09, 2018

‘gsr’..

CS(OS) 743/2012

Page 4 of 4