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

+ **CS(OS) 617/2006**

MRIDUL AGGARWAL Plaintiff

Through: **Mr. Rajesh Aggarwal, Adv.**

Versus

PRABHA DEVI GUPTA & ORS. Defendants

Through: **D-2 in person.**

Mr. Asyush Agarwala, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.04.2019

IA No.1038/2019 (of D-1&2 u/O XVI r/w S-151 CPC)

1. The defendant No.2 Sh. Piyush appearing in person and also as a legal heir of deceased defendant No.1 Prabha Devi Gupta has filed this application for examination on priority of Parveen Kumar Gupta, Davendera Sain, Moinuddin Siddique and Mahip Naik, Advocate.

2. The counsel for the plaintiff states that the evidence of the defendants is being recorded before the Joint Registrar and the defendant No.2 has already examined himself. He further states that Parveen Kumar Gupta, Davender Sain and Moinuddin Siddique are sought to be examined as attesting witnesses to the Will propounded by the defendant No.2 of the defendant No.1 and qua which Issue No.3 has been framed on 28th July, 2009. He further states that the said witnesses have already been examined by the defendants in another suit between the parties and the plaintiff also

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has exhaustively cross-examined the said witnesses in the said other proceeding and there is no need to examine the said witnesses again and the certified copies of the evidence recorded of the said witnesses is already on record in this suit and can be read in evidence.

3. The defendant No.2 appearing in person states that though he has no objection to the said evidence recorded in the other proceeding being read but “the witnesses must come to the Court in this proceeding and depose”.

4. On enquiry, whether the defendant No.2 wants anything additional to be deposed by the said three witnesses, the defendant No.2 replies in the negative.

5. Once it is so, the suggestion of the counsel for the plaintiff is found to be expedient and time saving and need is not felt to examine the aforesaid three witnesses all over again in this proceeding and their evidence in the other proceeding between the parties will be read as evidence in this proceeding as well.

6. At this stage, the counsel for the defendant No.3 states that though the defendant No.3 is supporting the plaintiff but he needs time to consider whether the defendant No.3 needs to cross-examine the aforesaid three witnesses.

7. Qua the fourth witness i.e. Mahip Naik, Advocate, the counsel for the plaintiff states that the defendant No.2 in the other proceeding aforesaid, took ten opportunities to serve the said witness but could not serve the said witness. He thus states that no purpose will be served, in this proceeding, again granting permission to the defendant No.2 to start the process of summoning of Mahip Naik, Advocate whom the defendant No.2 could not

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serve in the other proceeding.

8. I have enquired from the defendant No.2 appearing in person, whether he is willing to serve and produce the said Mahip Naik, Advocate on his own responsibility and/or whether he has any new address of Mahip Naik, Advocate.

9. The defendant No.2 replies in the negative.

10. In this view of the matter, the need to permit the defendant No.2 to summon Mahip Naik, Advocate, Jabalpur, Madhya Pradesh is not felt.

11. The application for summoning Mahip Naik, Advocate is dismissed.

12. The counsel for the defendant No.3 to take instructions.

13. List on 15th April, 2019.

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14. The counsel for the defendant No.3 states that the defendant No.3, on 11th February, 2019 before the Joint Registrar sought to cross-examine the defendant No.2 but was directed to file an application.

15. I have enquired from the counsel for the defendant No.3 that since the defendant No.3 is supporting the plaintiff and has not taken any independent pleas, what is the right of cross-examination of the defendant No.2 and what questions in cross-examination are required to be put.

16. The counsel for the defendant No.3 states he needs to examine the said aspect as well.

17. List on 15th April, 2019.

RAJIV SAHAI ENDLAW, J.

APRIL 03, 2019

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