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

\+ **CS (OS) 977/2014**

VIJAY KUMAR KATYAL & ANR. ..... Plaintiffs

Through: Mr. S. C. Singhal, Advocate. (M: 9810061558)

versus

RAVI KUMAR KATYAL & ANR. ..... Defendants

Through: Mr. Abinash K. Mishra and Mr. Gaurav Kumar Pandey, Advocates for D-1. (M:9811235958)

Mr. Vivek B. Saharya, Advocate for D-2. (M:9811156831)

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 13.08.2019

CS (OS) 977/2014

1. Vide order dated 1st December, 2016 four issues were framed to be heard as preliminary issues. The Court has heard the ld. counsels for the parties briefly and has also perused the judgment dated 19th August, 2013 in the probate case.

2. The brief background to this suit is that late Mr. Amir Chand Katyal has four children, i.e., three sons and a daughter. Two of the sons, namely Mr. Vijay Kumar Katyal and Mr. Vinod Kumar Katyal, are the Plaintiffs. Defendant No.1 - Mr. Ravi Kumar Katyal is the third son and Defendant No.2 - Ms. Veena Kumari Katyal is the unmarried daughter. The deceased was the owner of property bearing No. A-1/137, Safdarjung Enclave, New Delhi. While Mr. Ravi Kumar Katyal, one of the sons, had filed a probate

petition seeking grant of probate in respect of Will dated 20th November, 2001, in the said petition itself, Ms. Veena Kumari Katyal, the unmarried daughter, relied upon a Will dated 11th April, 2004. Though both the Plaintiffs were parties to the said probate proceedings, neither of them appeared in the matter and they were proceeded against *ex parte*. The judgment of the probate Court shows that the Court held that in respect of the second Will dated 11th April, 2004, though the handwriting of the testator is admitted, no attesting witness was produced and hence the said Will cannot be considered as being proved.

3. Insofar as the first Will dated 20th November, 2001 is concerned, the probate Court held that the said Will was proved, however, in view of the fact that another Will dated 11th April, 2004 had been produced by Ms. Veena Kumari Katyal, even this Will cannot be considered to be the last and final Will of the deceased. Thus, the probate petition was dismissed. The same is the subject matter of an appeal pending before this Court.

4. Ld. Counsel for Defendant No.2 submits that the Will dated 11th April, 2004 is the last and final Will of the Deceased and the same ought to be accepted as such by this Court.

5. The question as to which of the Wills is valid and if any probate is to be granted is to be decided in FAO No. 441/13.

6. The status as on date is that neither Will has been accepted by the Court and the Plaintiffs have thus preferred the present suit for partition and rendition of accounts. The fact remains that neither of the Wills are at this stage held to be proved. Issues have to be thus framed in the matter so that the suit may proceed further and the proceedings are not delayed. At the stage when FAO No. 441/2013 is decided, the Defendants are permitted to

place the orders/judgment passed therein and seek appropriate orders. Accordingly, the following issues are framed:

1. *Whether the suit has been appropriately valued for the purposes of Court Fee? OPD 1&2*
2. *Whether the Plaintiffs are entitled to a decree of partition in respect of the assets of Late Amir Chand Katyal? OPP 1&2*
3. *Whether the Plaintiffs are entitled to a decree of rendition of accounts? OPP 1&2*
4. *Relief.*

7. The parties shall file their list of witnesses within four weeks. Plaintiffs to file affidavits in evidence within six weeks. FAO No. 441/2013 is stated to be listed on 25th September, 2019.

8. List before the Court on 17th December, 2019.

9. List before the ld. Joint Registrar on 16th October, 2019.

10. The above observations of the Court are only in the context of whether the issues already framed have to be determined as preliminary issues or not. These observations shall not bind the adjudication of the present suit or FAO No. 441/2013.

I.A. 6261/2014 (for stay)

11. The *status quo* order dated 2nd April, 2014 shall continue during the pendency of the present suit.

12. I.A. is disposed of. Parties are permitted to seek variation, if so advised, post the decision in FAO NO. 441/2013.

PRATHIBA M. SINGH, J.

AUGUST 13, 2019/*dj*