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

+ **TEST.CAS. 38/2014**

HARKIRAT SINGH SODHI

..... Petitioner

Through: Mr. Lalit Gupta, Mr. Sahil Chopra, Mr Gaurav Lavania, Mr. Maharshi Kaler, Mr. Dhananjaya Sud and Ms. Bhawna, Advocates

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Amrit Kaur Oberai and Mr. Utsav Jain, Advocates for R-2 to 4
Mr. Jagjit Singh and Mr. Preet Singh,
Advocates for D-5 & 6

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% **06.01.2017**

IA 7137/2014 (stay)

It is pointed out that this application has remained pending but for some reasons it is not shown in the cause list. It is further pointed out by the learned counsel on both sides that a status quo with regard to the title, possession and construction of the subject property was granted by order dated 22.04.2014 with the consent of all parties.

The learned counsel on both sides agree that the said order may

TEST.CAS. 38/2014

page 1 of 6



be made absolute for the pendency of the present testamentary case. It is so ordered. The application is disposed of accordingly.

IA 13020/2015 (u/O 8 R. 1 A CPC moved by R2 to 4)

The learned counsel for the petitioner fairly concedes to the prayer made in this application submitting no objection to the additional documents to be brought on record though only adding that he would also be moving a similar application for similar relief in respect of the documents which have already been filed by him on record and also for purposes of some further documents.

The application of the petitioner would be considered as and when moved. Presently, the application of respondent no.2 to 4 is allowed. The documents are taken on record.

IA 14189/2015 (u/O. 16 R. 1 CPC)

The learned counsel on both sides jointly submit that no further directions on this application are required as the order dated 17.07.2015 granted by the Joint Registrar (J) have served the purpose.

The application is disposed of accordingly.

IA 25774/2015 (u/S. 151 CPC by the petitioner)

The learned counsel for the petitioner / applicant submits that this application has become infructuous in view of the subsequent orders and therefore, is not pressed.

It is disposed of accordingly.

IA 2062/2016 (u/S. 151 CPC)

This application is shown in the cause list as pending. The learned counsel for the petitioner / applicant submits that with the order dated

TEST.CAS. 38/2014

page 2 of 6



22.04.2016 already passed, application may be treated as disposed of to which the learned counsel for the opposite party submits no objection.

The application is treated as disposed of.

IA 13970/2015 (u/s. 151 CPC of the petitioner)

Pursuant to the directions in the earlier order, file of Test Case 42/2014 titled Amita Gandoak Vs. State and Ors. has also been put up. The prayer in the application is for consolidation of the two cases each propounding a different Will of the deceased whose estate is the subject matter of both the petitions.

The learned counsel for the respondent no.2 to 4 on one hand and for respondent no. 5 and 6 on the other, respondent no.7 not participating in these proceedings despite notice, fairly concede to the prayer in the application. Since both the cases relate to the estate of the same person, and make identical prayers for grant of probate though under different Wills propounded by each side, it is desirable that both the matters are inquired into and adjudicated upon simultaneously.

In this view, both the cases are hereby consolidated. Having regard to the fact that Test Case 38/2014 was first in chronology and further that the Will propounded herein is also prior in terms of time to the date of the Will propounded in the other case, it is directed that Test Cas 38/2014 shall be the lead case in which evidence shall be recorded which shall, however, govern the decision in both the cases to be rendered by a common judgment.

It appears that after framing of issues in the connected Test Case 42/2014, affidavit in evidence has been filed for and on behalf of the petitioner of the

TEST.CAS. 38/2014

page 3 of 6



said case.

Given the above directions, the recording of evidence in the said case shall presently be kept on hold. The petitioner of the said connected matter Test Cas 42/2014 being one of the party respondents in Test Cas 38/2014 will be entitled to lead evidence by furnishing a fresh affidavit at appropriate stage after the petitioner of this case has concluded his evidence.

The application stands disposed of with these directions.

OA 2/2017 against order dated 11.11.2016 of the Joint Registrar, IA 140/2017 under Section 5 of the Limitation Act and IA 141/2017 (u/s. 151 CPC) all moved by the petitioner of Test Cas 38/2014

Exemption is granted subject to just exceptions.

Having regard to the grounds set out in the application, the delay in filing the original appeal is condoned.

The learned counsel for the respondents fairly concedes that given the order of consolidation of Test Cas 38/2014 with Test Cas 42/2014 as above, the order dated 11.11.2016 of the Joint Registrar declining calling for the record of the other Test Case stands rendered erroneous. Since both the cases shall now proceed together, the files of both will be available at the stage of recording of evidence and references may be made to documents in each case at such stage for purposes of examination, cross-examination and re-examination, if any.

Original appeal thus is allowed in above terms.

IA No.15268/2016 (u/S. 151 CPC of respondent no.2 to 4)

The learned counsel for the applicant / respondent no.2 to 4 in Test
TEST.CAS. 38/2014

page 4 of 6



Cas 38/2014 submits that in view of the consolidation order, this application has become infructuous. It is disposed of accordingly.

IA No.15256/2016 (u/O. 14 R. 1 r/w S. 151 CPC) of respondent no.2 to 4 and IA 142/2017 (u/S. 148 r/w. S. 151 CPC of the petitioner in Test Cas 38/2014)

The learned counsel for respondent no.2 to 4 submits no objection to the enlargement of time as prayed by the petitioner by application (IA 142/2017) in the context of filing reply to the said application. Enlargement of time is thus granted.

It is noted that no issues have been framed in Test Cas 38/2014. Since this case has been consolidated with Test Cas 42/2014, issues require to be framed. Pleadings having since been completed, issues are being framed hereinafter.

The application is disposed of with these observations.

TEST CASE 38/2014

Having heard both sides and having gone through the pleadings on record as now agreed by the learned counsel on all sides, following issues arise and thus are framed in the context of Test Cas 38/2014 :-

(i). Whether the Will dated 13.01.1987 of Mrs. Surinder Kaur Sodhi propounded by the petitioner is the last, valid and genuine Will of Mrs. Surinder Kaur Sodhi? OPP

(ii). Whether Mrs. Surinder Kaur Sodhi executed Deed of Revocation dated 07.06.2004 in respect of the Will dated 13.01.1987? OPR-2

(iii). Whether the Will dated 07.09.2004 of Mrs. Surinder Kaur Sodhi is her last, valid and genuine Will? OPR-2

TEST.CAS. 38/2014

page 5 of 6



The case shall be taken up by the Local Commissioner appointed by earlier orders for fixing appropriate schedule on 17.01.2017 at 2.30 p.m.

The matter shall be notified awaiting report of the Local Commissioner in the court on 25.05.2017.

R.K.GAUBA, J

JANUARY 06, 2017

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TEST.CAS. 38/2014

page 6 of 6