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

+ CS(OS) 1312/2007, CCP(O) 126/2007, CC No.210/2008,
CCP(O) 32/2016, IA No.5475/2016(u/S.151 CPC)

UJJAL S. MAKKER

..... Plaintiff

Through: Mr. Rahul Sharma with Mr. C.K.Bhatt &
Ms. Sunanda Pandey, Advs.

versus

KAVAL BAJAJ & ORS

..... Defendants

Through: Mr. Rajat Bhalla, Adv. for D-1.
Mr. Rajat Aneja with Ms. Chandrika Gupta,
Advs. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

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06.03.2020

**IA No.1288/2018(of the defendant no.3 Sudhir Dhingra u/O.XVIII R.17
CPC)**

1. The defendant no.3 Sudhir Dhingra seeks to cross-examine all the witnesses examined by the plaintiff till now.
2. The counsels have been heard and the facts which emerge are (i) that property No.133/10, Golf Links, New Delhi was owned by Smt. Agya Kaur who died leaving Ujjal S. Makker as son and Kaval Bajaj and Suman Ghandiok as daughters; (ii) this suit was initially filed by Suman Ghandiok, for partition of the property, impleading Ujjal S. Makker and Kaval Bajaj as defendants thereto; (iii) it was the case of Suman Ghandiok that the mother Agya Kaur had died intestate; Kaval Bajaj took a stand that there was a Will of 10th September, 1997 bequeathing the property exclusively to her but she was

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willing for partition, with each having one-third share; (iv) Ujjal S. Makker set up a Will of the mother, bequeathing 50% property to Ujjal S. Makker and the remaining 50% to the Kaval Bajaj and Suman Ghandiok; (v) on the said pleadings, vide order dated 18th December, 2009, issues were framed with the onus to prove the Will set up by Ujjal S. Makker on Ujjal S. Makkar; Kaval Bajaj having given up her plea, no issue was framed with respect to the Will set up by Kaval Bajaj and Ujjal S. Makker asked to lead evidence first; (vi) on Suman Ghandiok not wanting to contest the suit, Ujjal S. Makker was transposed as plaintiff; (vii) Suman Ghandiok relinquished her one-third share in the property in favour of Kaval Bajaj; and, (viii) Kaval Bajaj has sold the property to Sudhir Dhingra who was impleaded as defendant no.3.

3. This application has been filed by Sudhir Dhingra for an opportunity to cross-examine witnesses of Ujjal S. Makker who had been examined prior to Sudhir Dhingra being impleaded as party.

4. I have enquired from counsel for Sudhir Dhingra, the entitlement of Sudhir Dhingra, as a purchaser from Kaval Bajaj, to cross-examine the witnesses of Ujjal S. Makker who have already been cross-examined by Kaval Bajaj and Suman Ghandiok and/or with respect to whom opportunity to cross-examine was given to Kaval Bajaj and Suman Ghandiok.

5. The counsel for Sudhir Dhingra states that only Suman Ghandiok cross-examined the witnesses of Ujjal S. Makker.

6. Sudhir Dhingra is not only a successor in interest of Kaval Bajaj but also of Suman Ghandiok since Suman Ghandiok relinquished her one-third share in the property in favour of Kaval Bajaj. Moreover, Kaval Bajaj in

spite of opportunity given, having not cross-examined the witnesses of Ujjal S. Makker, Sudhir Dhingra as a purchaser from Kaval Bajaj cannot have a second round for cross-examination.

7. Moreover, the counsel for the Ujjal S. Makker states that of the ten witnesses examined, two have already died.

8. There is thus no merit in IA No.1288/2018 which is dismissed.

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9. It may be observed that though Ujjal S. Makker has set up a Will of Smt. Agya Kaur bequeathing 50% of the property to him but has neither pleaded of the date of Will nor has the said Will seen the light of the day.

10. The counsel for Ujjal S. Makker, on enquiry whether the ten witnesses already examined have been able to establish by secondary evidence the existence of any such Will and contents thereof, is unable to show any evidence also, at least as of today.

11. It appears that Ujjal S. Makker is proceeding with this suit without having any regard to law. It is thus made clear, that in the event of Ujjal S. Makker failing in the suit, exemplary costs shall follow and which shall be deductible from his admitted one-third share in the property.

12. List before the Joint Registrar on 26th March, 2020 for scheduling further date(s) of trial.

RAJIV SAHAI ENDLAW, J

MARCH 06, 2020

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