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

+ CS(OS) No.1312/2007, IA No.5475/2016 (of D-1 u/S 151 CPC), CCP No.126/2007 & CCP No.32/2016 & CC No.210/2008

UJJAL S. MAKKER

..... Plaintiff

Through: Mr. Rahul Sharma, Ms. Jyoti Dutt
Sharma and Mr. C.K. Bhatt, Advs.

Versus

KAVAL BAJAJ & ORS

..... Defendants

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

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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30.03.2017

1. The counsel for the plaintiff Ujjal S. Makker, the counsel for defendant no.3 Sudhir Dhingra and the counsel for defendant no.1 Kaval Bajaj state (i) that the pleadings in terms of order dated 1st February, 2017 have been completed; (ii) no additional issues are required to be framed; and, (iii) that the matter is to be listed for further evidence of the plaintiff Ujjal S. Makker.

2. Option given of having the evidence recorded before the Court Commissioner has been declined.

3. The counsel for the plaintiff Ujjal S. Makker states that it is immaterial which of the counsels cross-examines his witnesses first, whether of Kaval Bajaj or of Sudhir Dhingra.

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4. At this stage, it emerges that in this suit for partition, the only issue is as to the proof of the Will set-up by the plaintiff Ujjal S. Makker of the common predecessor.

5. It also emerges that though the defendant No.1 Kaval Bajaj had set up another Will and had also applied for probate thereof but upon the Will not being proved, the defendant No.1 Kaval Bajaj was granted letters of administration, without copy of the Will annexed, instead of probate.

6. I have enquired from the counsel for the defendant No.1 Kaval Bajaj as to how the defendant No.1 Kaval Bajaj, after probate of the document set up by her as the Will being denied, could sell the property as sole owner thereof to defendant No.3 Sudhir Dhingra. It has further been enquired, whether not the defendant No.1 Kaval Bajaj as a condition for grant of letters of administration would have also furnished an administration bond and whether not the action of the defendant No.1 Kaval Bajaj of selling the property as sole owner when admittedly the common predecessor had left other heirs also, is in violation of administration bond so furnished.

7. As far as I recollect, violation of administration bond so furnished is a penal offence. It has thus been enquired from the counsel for the defendant No.1 Kaval Bajaj, as to why the defendant No.1 Kaval Bajaj should not be prosecuted therefor.

8. It has yet further been enquired that if that is the case, then the sale by the defendant No.1 Kaval Bajaj in favour of the defendant No.3 Sudhir Dhingra can only be of the defendant No.1 Ms. Kaval Bajaj's share of the property and cannot be of the share of the plaintiff Ujjal S. Makker.

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9. The counsel for the defendant No.1 Kaval Bajaj states that the defendant No.2 Suman Ghandiok has registered a relinquishment deed of her share in the property in favour of the defendant No.1 Kaval Bajaj.
10. Even if that be so, the same would make the defendant No.1 Kaval Bajaj at best the owner of the share of the defendant No.2 Suman Ghandiok as well.
11. The counsel for the plaintiff Ujjal S. Makker states that under the Will set up by the plaintiff Ujjal S. Makker, 50% share of the property has been given to the plaintiff Ujjal S. Makker.
12. The decision on the said Will would thus only make a difference of, whether the plaintiff Ujjal S. Makker is the owner of 1/3 share in the property, as would be the case, if the Will in favour of the plaintiff Ujjal S. Makker were to be not proved or of 1/2 share as would be the case if the Will were to be proved.
13. On enquiry, it is informed that the defendant No.1 Ms. Kaval Bajaj is in United States of America (USA) and is a citizen of USA.
14. Either the defendant No.1 Kaval Bajaj should appear in person on the next date of hearing or the counsel for the defendant No.1 Kaval Bajaj should come prepared to answer all the aforesaid.
15. List on 20th April, 2017.

RAJIV SAHAI ENDLAW, J.

MARCH 30, 2017
'pp/bs'..