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

+ **CS(OS) 2658/2012**

MRIDUL SETH

..... Plaintiff

Through: Mr Lalit Gupta, Mr Siddharth Arora,
Mr Harsh Singhal and Mr Gaurav,
Advocates.

versus

DR MALVICA SETH & ANR

..... Defendants

Through: Mr H. L. Raina, Advocate.

AND

+ **TEST.CAS. 39/2012**

SIDDHARTHA KAPOOR

..... Petitioner

Through:

versus

GOVT OF NCT AND OTHERS

..... Respondents

Through: Mr Lalit Gupta, Mr Siddharth Arora,
Mr Harsh Singhal and Mr Gaurav,
Advocates for respondent no.4.
Mr H. L. Raina, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.02.2017

The learned counsel for the parties state that the recording of evidence is not concluded as yet. They, however, submit that there is a slight controversy that has been raised: the defendant in CS(OS) No.2658/2012 has led its evidence in support of the Will in Test Case No.39/2012 and is now insisting that the plaintiff (in CS(OS) No.2658/2012) also complete his



recording of evidence. On the other hand, the learned counsel for the plaintiff states that the defendant in CS(OS) No.2658/2012 (petitioner in TEST CAS. No.39/2012) should complete his evidence in both the matters before the evidence of the plaintiff, in CS(OS) No.2658/2012 and respondent in TEST CAS No.15/2016 is recorded.

The aforesaid procedure may not be expedient in the present case since although the issue relating to validity of the Will is common, there are other issues framed in the suit and the burden of proof in respect of those issues rests on the plaintiff. It is also seen that in the order dated 24.08.2015, this Court had already directed that the evidence shall be recorded first in the probate case which would be treated as the lead matter. Accordingly, the parties are required to complete the recording of evidence in the probate case - TEST CAS No.39/2012.

The petitioner in TEST CAS No.39/2012 has led its evidence. The witnesses have been examined and cross-examined. The respondent is now required to lead evidence in the said case (TEST CAS No.39/2012). This would be followed by recording of plaintiff's evidence in the suit. The defendants in the suit would lead any remaining evidence, if necessary, thereafter.

List before the Local Commissioner on 27.02.2017, the date already fixed.

List before the Court on 27.09.2017.

VIBHU BAKHRU, J

FEBRUARY 23, 2017/MK