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

CS(OS) 2025/2010

UPENDRA NATH BAJAJ

..... Plaintiff

Through: Mr. Arun Vohra, Ms. Akriti Vohra &
Mr. Pranay Mehta, Advs.

Versus

JATINDER BAJAJ & ANR

..... Defendants

Through: Mr. S.N, Choudhari, Ms. Shruti
Choudhari & Mr. Sukreet
Khandelwal, Advs. for D-1.
Mr. Ankit Jain & Ms. Alka Chojar,
Advs. for D-2.

AND

+ TEST.CAS. 85/2011

JATINDER NATH BAJAJ

..... Petitioner

Through: Mr. S.N, Choudhari, Ms. Shruti
Choudhari & Mr. Sukreet
Khandelwal, Advs.

Versus

STATE & ORS

..... Respondents

Through: Mr. Gursharan Singh, Adv. for D-1.
Mr. Arun Vohra, Ms. Akriti Vohra &
Mr. Pranay Mehta, Advs. for R-2.
Mr. Ankit Kain & Ms. Alka Chojar,
Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.04.2018

**IA No.7898/2017 in TEST.CAS. 85/2011 (of R-3 Smt. Raje Bidani u/S
151 CPC)**

1. The counsel for the applicant/respondent No.3 has drawn attention to the order dated 25th March, 2014 framing issues in the suit and the testamentary case and to the order dated 16th September, 2015 of the CS(OS) 2025/2010 & TEST.CAS. 85/2011

Page 1 of 4



Division Bench in FAO(OS) No.259/2014 preferred thereagainst and has contended that the petitioner has in his affidavit by way of examination-in-chief deposed of matters qua which issues have not been framed and rather it has been held that issues qua such matters do not arise; striking off of certain paragraphs of the affidavit by way of examination-in-chief is sought. It is particularly argued that the petitioner has led evidence of Ramesh Nagar property being held *benami* by Mrs. A.K. Sindhwani.

2. The counsel for the petitioner has drawn attention to the order dated 12th January, 2016 of the Division Bench in Review Petition No.545/2015 in FAO(OS) No.259/2014 framing an issue in addition to the issues framed on 25th March, 2014. The counsel for the petitioner has also drawn attention to the order dated 16th September, 2015 *supra* where the Division Bench has *inter alia* observing that “we are of the opinion that the question of title to the said property is kept open to be adjudicated in an appropriate manner”.

3. The counsel for the petitioner, on enquiry, whether the petitioner is seeking to lead evidence in the present suit of Ramesh Nagar property being the *benami* property of deceased Mrs. A.K. Sindhwani, states that the petitioner is not seeking to prove that; it is however stated that it is the objection of the applicant/respondent No.3 that the document of which probate as a Will is sought is bad for the reason of also bequeathing Ramesh Nagar property which was not in the name of the deceased Ishwar Datt Bajaj.

4. The counsel for the petitioner however states that it is the case of the petitioner that Ramesh Nagar property was always in the name of Mrs. A.K. Sindhwani but the deceased Ishwar Datt Bajaj had purchased the same from



her.

5. The counsel for the applicant/respondent No.3 clarifies that his objection is not with respect to the additional issue framed by the Division Bench on 12th January, 2016. He however contends that the observation aforesaid in the order dated 16th September, 2015 does not entitle the petitioner to prove in the present proceedings the title of the deceased Ishwar Datt Bajaj to Ramesh Nagar property.

6. However since the counsel for the petitioner also has agreed that the petitioner, in his affidavit by way of examination-in-chief has deposed with respect to Ramesh Nagar property only to meet the objection of the document of which probate is sought being bad for the said reason clarifying so, the said aspect of the matter is disposed of.

7. As far as the other contents of the affidavit by way of examination-in-chief, which according to the applicant/respondent No.3 are beyond the issues framed on 25th March, 2014, are concerned, rather than directing the petitioner to file a fresh affidavit, it is clarified that non-cross-examination by the applicant/respondent No.3 or by any of the other respondents of the said witness qua the said contents, would not amount to the said respondents conceding to the said contents of the affidavit by way of examination-in-chief.

8. The counsel for the respondent No.2 Upender Nath Bajaj states that Mrs. A.K. Sindhwani had also left a Will with respect to Ramesh Nagar property and of which also probate is sought.



9. With the clarifications aforesaid, the application is disposed of.

CS(OS) 2025/2010 & IA No.13264/2010 (u/O XXXIX R-1&2 CPC) & TEST.CAS. 85/2011

10. List before the Joint Registrar on 11th May, 2018 for scheduling the dates of evidence.

RAJIV SAHAI ENDLAW, J.

APRIL 23, 2018
‘bh’..