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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 2552/2014, CC 32/2015, CC 2/2023, I.As. 3270/2015, 14719/2015, 16251/2015, 21879/2015, 6219/2016, 14286/2018, 3544/2019, 10203/2020, 13977/2023 & 14502/2023**
MANJIT SINGH KOCHHAR Plaintiff

Through: Mr. Gurbir Singh Raikhy, Adv. (M. 9810062742)

versus

HARJIT SINGH KOCHHAR & ORS Defendants

Through: Mr. Siddharth Yadav Sr. Adv. with Mr. Narender Lodiwal, Advs. and D- 1 and 2 Mr. Harjit Singh Kochhar in person, (M. 7982946367)
Mr. Aakashdeep Singh Roda, Ms. Arti Singh, Advs. for D-3 (M. 9899838859)
Mr. A.S. Chandio Sr. Adv, Mr. Pratyush Sharma with Mr. Sahil Azam and Ms. Simran Kohli Advs for D-5 (M. 9711744465)

11 **AND**

+ **TEST.CAS. 57/2014, I.As. 3635/2019, 6396/2022 & 16533/2023**
DRA MOUNTFORD Petitioner

Through: Mr. Wasim Ashraf, Adv. (M. 9910681789)

versus

STATE GOVERNMENT OF NCT OF DELHI Respondent

Through: Mr. Siddharth Yadav Sr. Adv. with Mr. Narender Lodiwal, Advs. and D- 1 Mr. Harjit Singh Kochhar in person, (M. 7982946367)
Mr. Gurbir Singh Raikhy, Adv. for R-3 (M. 9810062742)
Mr. A.S. Chandio Sr. Adv, Mr. Pratyush Sharma, Mr. Sahil Azam, and Ms. Simran Kohli, Advs. for R-



4 (M. 9711744465)

CORAM:

JUSTICE PRATHIBA M. SINGH

O R D E R

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19.01.2024

1. This hearing has been done through hybrid mode.

I.A. 6396/2022 (to place the case before the joint registrar) in TEST. CAS. 57/2014.

2. The present application has been filed by the Plaintiff-D.R.A Montford for presenting the case before the Id. Joint Registrar. The application is infructuous and is accordingly disposed of.

I.A. 16533/2023 in TEST CAS. 57/2014

3. This is an application by the Plaintiff for listing the testamentary case being **Test. Cas. 57/2014** along with the **CS(OS) 2552/2014**. Since the testamentary case and the suit are being taken up together today, the present application is infructuous and is accordingly disposed of.

I.A. 3635/2023 (for directions) in TEST CAS. 57/2014

4. This is an application by the Respondent No. 2 seeking directions to expeditiously decide the present suit. Considering that the matter is being taken up today, the application is disposed of.

CS(OS) 2552/2014, CC 32/2015, CC 2/2023, I.As. 3270/2015, 14719/2015, 16251/2015, 21879/2015, 6219/2016, 14286/2018, 3544/2019, 10203/2020, 13977/2023 & 14502/2023

TEST. CAS. 57/2014

5. The present suit and testamentary case relate to disputes between the three sons of Late Sh. Manohar Singh Kochhar. The testamentary case being **Test. Cas. 57/2014** has been filed by the Petitioner- DRA MOUNTFORD,



who is the executor, seeking grant of probate in respect of the registered Will dated 18th March, 2003 executed by the Testator- Late Sh. Manohar Singh Kochhar. The suit being **CS(OS) 2552/2014** is for declaration, permanent injunction, rendition of accounts and partition of the assets of Late Sh. Manohar Singh Kochhar. The parties in the suit are:

- Sh. Manjit Singh Kochhar - son
- Sh. Harjit Singh Kochhar - son
- Sh. Gauravjit Singh Kochhar - grandson
- Sh. Guljit Singh Kochhar - son
- Sh. Arjun Singh Kochhar - grandson

6. Apart from the suit, counterclaims have been filed by Defendant Nos. 5 and 6 being **CC 32/2015** and **CC 2/2023**. The immovable assets are:

- i) E-24, Connaught Place, New Delhi
- ii) 71, Sunder Nagar, New Delhi
- iii) Willow Bank Estate, Shimla

7. There are several applications pending. Today, submissions have been heard partly on the following four applications:

- i) **I.A.3270/2015**
- ii) **I.A.14719/2015**
- iii) **I.A.16251/2015**
- iv) **I.A. 21879/2015**

8. All of these applications are broadly disputes involving Defendant No.1 and Plaintiff on one hand, and Plaintiff and Defendant No.5 on the other hand. In the application under Order VII Rule 11 CPC *i.e.*, **I.A.16251/2015**, rejection of the counterclaim is sought on the ground that no challenge can be raised in respect of the Willow Bank Estate and Willow



Bank Cottage situated at the Mall, Shimla, Himachal Pradesh on the ground of acquiescence and waiver. It is also argued that the counterclaim is barred by limitation.

9. **I.A.21879/2015** is an application for amendment under Order VI Rule 17 CPC, filed by the counter-claimant-Guljit Singh Kochhar, seeking to amend the counterclaim, to add a ground of challenge to the gift deed dated 19th March, 1986, through which it is alleged that the father is stated to have gifted the said Willow Bank Estate in favour of Plaintiff and Defendant No.1.

10. **I.A. 3270/2015** and **I.A. 14719/2015** are applications under Order XXXIX Rule 1 and 2 CPC and Order XXXIX Rule 4 CPC respectively.

11. Today, part submissions have been made on behalf of Defendant No.1 by Mr. Yadav, Id. Senior Counsel and by Mr. Sharma, Id. Counsel on behalf of Defendant No.5. The submissions are inconclusive.

12. One possible course of action for these four applications is to allow the amendment to the counterclaim while leaving open the objections of the Plaintiff and Defendant No.1 to be taken in the amended written statement to the amended counterclaim. In addition, Id. Senior Counsel Mr. Yadav submits that he ought to be permitted to seek rejection of the amended counterclaim, which has not yet been filed, by moving a fresh application under Order VII Rule 11 CPC. On this issue, let the Id. Counsels seek instructions.

13. Id. Counsel for Defendant No.5 is agreeable to the suggestion that a fresh application under Order VII Rule 11 CPC be filed, in respect of the amended counterclaim, so long as the trial is not derailed in any manner.

14. The Plaintiff in this case also seeks clubbing of the trial in the suit



with the **Test. Cas. 57/2014** on the ground that there is a challenge to the Will in the suit.

15. In the **Test. Cas. 57/2014**, the evidence has already been fixed for 30th January, 2024 and 31st January, 2024. The Petitioner, who is the executor of the Will, is leading evidence. All parties in the present suit are free to cross-examine the Petitioner and/or his witnesses, so that any objections that they wish to raise in respect of the Will can be covered in the testamentary case, and any duplication of evidence can be avoided when the **CS(OS) 2552/2014** goes to trial. The trial in the testamentary case shall continue. The evidence shall be conducted on a day-to-day basis in respect of the six witnesses who are Part A witnesses.

16. Reasonable time for preparation of the Id. Counsels shall be given by the Id. Joint Registrar, after the conclusion of the evidence of Defendant Nos. 1, 2 and 3 in respect of Part A witnesses.

17. Insofar as Defendant No.6 is concerned, he has filed an application seeking injunction against dispossession of the elder son of Defendant No.1. Ld. Counsel for Defendant No.1 submits that the said application is not maintainable in this suit inasmuch as the present suit relates to partition of assets of grandfather. The Defendant No.1 to cite the case laws on this issue on the next date of hearing. If there is any threat of dispossession to Defendant No.6, he is free to mention the matter before the Court.

18. Accordingly, list this matter for further hearing 5th April, 2024.

19. At least one week before the next date, parties are permitted to file a short note on all the applications.

PRATHIBA M. SINGH, J.

JANUARY 19, 2024

Rahul/dn