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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 296/2016 & IA Nos. 1944/2018 (u/S 151 CPC) & 2864/2018
((u/O 39 R-1 & 2 CPC) & OAs No. 11/2018 & 19/2018 (against order
dt. 3rd January, 2018)

ASHOK BAURY

..... Plaintiff

Through: Mr. Gaurav Sarin, Mr. Ajay Baury,
Mr. Abhishek Manchanda, Advs.

versus

RAJ BAURY & ORS

..... Defendants

Through: Mr. P.D. Gupta, Sr. Adv. , Mr. Atul
Gupta, Adv. for Arun Sood.
Mr. Salman Khurshid, Sr.Adv.,
Mr. Pramod Kr. Dubey, Mr. Saurabh
Kumar, Advs. for D-2-6.
Mr. Santosh Kr. Tripathy, ASC for
GNCTD.

TEST.CAS. 11/2018

ASHOK BAURY

..... Petitioner

Through: Mr. Gaurav Sarin, Mr. Ajay Baury,
Mr. Abhishek Manchanda, Advs.

versus

STATE

..... Respondent

Through: Mr. Salman Khurshid, Sr.Adv.,
Mr. Pramod Kr. Dubey, Mr. Saurabh
Kumar, Advs. for R-2-4 & 6.
Mr. Atul Gupta, Adv. for Arun Sood.
Mr. Santosh Kr. Tripathy, ASC for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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ORDER

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19.03.2018

1. The counsel for the plaintiff in CS(OS) 296/2016 seeks to withdraw the suit to pursue Test Cas No. 11/2018, in terms of orders dated 6th February, 2018 and 12th February, 2018 in Test Cas No. 11/2018.
 2. The senior counsel for defendants No. 2 to 6 in CS(OS) 296/2016 have no objection.
 3. The senior counsel for Arun Sood, cited as a relative of the deceased in Test Cas No.11/2018, states that the counsel for the plaintiff / petitioner on 6th February, 2018, in Test Cas No.11/2018, wrongly stated that only the application of Arun Sood for impleadment in CS(OS) 296/2016 was pending; in fact, the said application had been allowed on 3rd January, 2018 and chamber appeals against the orders allowing the application were pending consideration.
 4. The senior counsel for Arun Sood states that Arun Sood, as a party in CS(OS) 296/2016, being a suit for partition, would like to be transposed as the plaintiff in the said suit.
 5. I have enquired from the senior counsel for Arun Sood whether not the reasons for which it was enquired from the petitioner / plaintiff that how he can pursue both the remedies simultaneously when they entail the same issues apply equally to Arun Sood as well.
 6. The senior counsel for Arun Sood states that Arun Sood, in his written statement to be filed in CS(OS) 296/2016, would also challenge the title of Bhagwanti Devi widow of Mathura Das to execute the Will qua which Test Cas No.11/2018 has been filed. It is contended that even after the Court
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decree of April, 1947, under which Bhagwanti Devi claimed title to the property willed, Mathura Das continued to exercise ownership rights with respect to the property and was the owner of the property.

7. I have considered whether Arun Sood should be allowed to pursue the partition suit and am of the opinion that in the facts aforesaid, transposition would not be proper and the remedy, if any of Arun Sood is to institute his own proceedings for setting aside of the title claiming which Bhagwanti Devi has executed the Will qua which Test Cas No.11/2018 has been filed and or for partition of the property.

8. It is quite obvious, that Arun Sood, by filing his written statement, is not seeking merely partition but is also seeking to challenge the title of the common ancestor Bhagwanti Devi and it would thus not be a suit for partition simpliciter, for transposition to be allowed.

9. It is also felt that when Arun Sood brings his own suit for the reliefs which he claims to be entitled to, several other questions as to whether the claim is within limitation or not, would also arise.

10. It is thus proper that Arun Sood institutes his own suit, especially when the senior counsel appearing for him also states that there will be no difference in Arun Sood being transposed as plaintiff in CS(OS) 296/2016 or in Arun Sood filing his own suit.

11. No case for transposition of Arun Sood as plaintiff in CS(OS) 296/2016 is made out and the said request is rejected.

12. Resultantly, CS(OS) 296/2016 is permitted to be withdrawn and is dismissed as withdrawn with liberty to the plaintiff and the other parties

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therein to seek partition, if desire the same, after the decision of Test Cas No. 11/2018.

13. As far as Test Cas No. 11/2018 is concerned, of the relatives of the deceased named in Schedule B of the petition, the counsels for relative No.2 Poonam Baury, relative No.3 Mala Kochhar, relative No.4 Simi Tuli, relative No.6 Pooja Narang and relative No.10 Arun Sood accept notice. Mr. Raj Baury appearing in person and as identified by counsel for the petitioner also accepts notice.

14. The counsel for the petitioner to supply complete paper books to the persons who have accepted notice today.

15. The petitioner to serve the remaining relatives in Test Cas No. 11/2018 by all modes including *dasti*, returnable before the Joint Registrar on 9th May, 2018.

16. List before the Court, for framing of issues if any, on 31st August, 2018.

RAJIV SAHAI ENDLAW, J

MARCH 19, 2018

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