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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 296/2016, OA No.11/2018 & OA No.19/2018 (against order dated 3rd January, 2018).
ASHOK BAURY Plaintiff

Through: Mr. Gaurav Sarin with Mr. Aman Shanker, Advs.

versus

RAJ BAURY & ORS Defendants

Through: Mr. Salman Khurshid, Sr. Adv. with Mr. Pramod Kumar Dubey, Mr. Alok Pandey and Ms. Harpreet Kalsi, Advs. for D-2-6.

Mr. P.D. Gupta, Sr. Adv. with Mr. Atul Gupta for relative Arun Sood.

AND

TEST.CAS. 11/2018 & IA No.11096/2018 (u/O XI R-12 & 14 CPC).

ASHOK BAURY Petitioner

Through: Mr. Prosenjeet Banerjee with Ms. Meera, Advs.

versus

STATE Respondent

Through: Mr. Salman Khurshid, Sr. Adv. with Mr. Pramod Kumar Dubey, Mr. Alok Pandey and Ms. Harpreet Kalsi, Advs. for R-2-4 & 6.

Mr. P.D. Gupta, Sr. Adv. with Mr. Atul Gupta for Arun Sood.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.11.2019**

1. Vide order dated 19th March, 2018, the request of Arun Sood, impleaded in CS(OS) No.296/2016 vide order dated 3rd January, 2018 of the Joint Registrar, for transposition as plaintiff therein was rejected and the suit

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dismissed as withdrawn with liberty to the parties, including Arun Sood, to seek partition, after the decision of the Test. Cas. No.11/2018.

2. Mr. Arun Sood aforesaid preferred FAO(OS) No.60/2018 against the order declining him right of transposition as plaintiff in the partition suit and which appeal has been allowed vide order dated 3rd July, 2019 with a direction to reconsider transposition after the said Arun Sood has had an opportunity to place his defence before the Court.

3. Mr. Arun Sood aforesaid was impleaded as defendant on 3rd January, 2018 and till date has not filed written statement.

4. The senior counsel for Arun Sood first attempted to state that the plaintiff was required to file an amended plaint and the said Arun Sood required to file written statement only thereafter. However a perusal of the order dated 3rd January, 2018 does not show any such direction to the plaintiff to file amended plaint.

5. The senior counsel for Arun Sood next states that written statement was not filed because the plaintiff had preferred a Chamber Appeal which was pending.

6. The same is also not a ground for not filing written statement.

7. Lastly it is stated that there was no direction for filing the written statement.

8. Written statement is to be filed without any direction, upon impleadment as a defendant.

9. Though in view of aforesaid, the right of the said Arun Sood to file written statement is liable to be closed but in deference to the order of the Division Bench, last opportunity of one week is given to the said Arun Sood



to file written statement, with the clarification that if written statement is not filed by 2nd December, 2019 with advance copy to the other counsels, the right of the said Arun Sood to file written statement shall stand closed without any further order.

10. The counsel for plaintiff states that the Chamber Appeals be heard first.

11. However a perusal of the order of the Division Bench shows that the defence of Arun Sood is to be before this Court first. Thereafter the Chamber Appeals as well as the question of transposition shall be considered.

12. Upon written statement being filed, replication be filed within four weeks therefrom.

13. As far as the Test Cas. is concerned, it is stated that the same is ripe for framing of issues. The counsel for the petitioner states that only relatives 10, 11 & 12 namely Arun Sood, Sushma Nath and Neelam Sood are contesting the Test. Cas. None appears for relatives 11 & 12 Sushma Nath and Neelam Sood in Schedule-B to the petition. Only the senior counsel for relative 10 Arun Sood appears.

14. On the pleadings, the following issues are framed:-

- (i) Whether document dated 5th May, 1983 has been executed in accordance with law by the deceased Bhagwanti Devi as her Will? OPP
- (ii) Whether the deceased Bhagwanti Devi, on 5th May, 1983, was not of sound disposing state of mind and thus the document



even if executed by her, is not her Will? OP(Relatives 10,11&12)

(iii) Relief.

15. No other issue arises or is pressed.
16. The senior counsel for Arun Sood states that onus of Issue no.(ii) should be on the petitioner.
17. I am unable to agree.
18. It is for the person disputing the soundness of mind to establish the same, with the petitioner having a right of rebuttal; else, the presumption is of soundness of mind of a living person.
19. The parties to file their list of witnesses within 15 days.
20. The petitioner to file affidavits by way of examination-in-chief within six weeks.
21. Attesting witnesses/witnesses to identify their signatures be examined first. If more than one witness in proof of the signatures of the attesting witness is to be examined, affidavits of all to be filed together and all be tendered on the same day for cross-examination.
22. The supporting relatives to have no right of cross-examination.
23. If the supporting relatives want to lead any evidence, the said evidence to be led after the evidence of the petitioner and before the evidence of the opposing relatives.
24. Option given of having evidence recorded on Commission has been accepted.
25. Commission is issued to Ms. R. Kiran Nath, District Judge (Retd.) (Mob. 9910384659) to record evidence in Test. Cas. She is requested to

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record the evidence within the Court Complex and to complete the same within six months of the date of first appearance of the parties before her. She is granted liberty to have the matter placed before the Court, if any of the parties are found delaying recording of the evidence.

26. The fee of the Court Commissioner is fixed at Rs.1 lakh besides out of pocket expenses. The entire expense of the Commission to be borne initially by the petitioner to be reimbursed by the opposing relatives in the event of opposition failing.

27. The Registry is directed to send the file of the suit at the place and time fixed by the Court Commissioner for recording of evidence.

28. The parties to commence recording of evidence within eight weeks hereof and to mutually schedule the dates of trial in consultation with the Commissioner.

29. List the suit for further consideration in terms of above, on 20th March, 2020.

30. Test. Cas. be listed after recording of evidence is completed.

RAJIV SAHAI ENDLAW, J

NOVEMBER 25, 2019

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