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

+ **CS(OS) 412/2016, I.A.5855/2021**

MRS SHIVANI KHULLAR & ANR

..... Plaintiffs

Through: Ms. Gulmeet Bindra, Advocate

versus

MR SAMIR BAJPAI & ORS

..... Defendants

Through: Mr. Shantanu Singh and Ms. Pragya Singh, Advocates for D-1 and 2.

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+ **TEST.CAS. 54/2018**

RAKESH MISHRA

..... Petitioner

Through:

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Shantanu Singh and Ms. Pragya Singh, Advocates for R- 2, 5 and 6
Ms. Gulmeet Bindra, Advocate for r-3 and 4

Mr. Prince Jain, Advocate for Non applicant IIFL

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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24.01.2024

CS(OS) 412/2016

1. On the basis of the pleadings, the following issues arise:

(i) Whether the suit property as in Schedule A attached the matter to the plaint is liable to be partitioned equally amongst the parties? If yes, to what share?

(ii) Whether the accounts are liable to be rendered by the



defendant by Defendant Nos. 1 and 2, in respect of the Banks and Demat account of Mr. Gopi Nath Bajpai and Mrs. Madhu Bajpai?
OPP

(iii) Whether the defendant Nos.1 and 2 are liable to be restrained from handling and operating financial assets including bank and Demat Accounts of the defendant no.3 (Ms. Madhu Vajpayee) and also from transferring the immovable assets of Ms. Madhu Vajpayee in favour of the party? OPP

(iv) Whether the parties are entitled to preliminary decree in respect of the suit properties?

(v) Whether the parties are entitled to final decree in respect of the assets of deceased Gopi Nath Bajpai?

(vi) Whether the parties are entitled to rendition of accounts?

(vii) Relief.

2. No other issue or relief arises or is pressed.

3. The parties to file list of witnesses within 15 days. The plaintiffs to file affidavits by way of examination-in-chief within four weeks.

4. Be listed on 18.03.2024.

TEST.CAS. 54/2018

5. On the basis of the pleadings, the following issues arise:

(i) Whether the Will dated 09.06.2016 of Ms. Madhu Vajpayee is last testament? OPP

(ii) Whether the probate is liable to be granted in favour of the petitioner? OPP

(iii) Whether Smt. Madhu Vajpayee was not mentally sound to execute the will dated 09.06.2016? OPD



(iv) Relief.

6. No other issue or relief arises or is pressed.

7. The Suit No. being CS (OS) 412/2016 and Test Case No. 54/2018 are hereby consolidated for the purpose of the recording of evidence, which shall be recorded as CS (OS) 412/2016 and shall be read in Test Case 54/2018.

8. Learned counsel for the plaintiff, submits that she does not press for relief of money decree against the defendant Nos.1 and 3, as has been prayed in Clause D of the prayer.

I.A. 7137/2022 (for directions) in CS (OS) 412/2016

9. The present application under Section 151 CPC has been filed on behalf of the plaintiffs in CS (OS) 412/2016, with a prayer that IIFL Securities Limited be directed to submit the detailed list of stock holdings with current market value and cash balance that is lying in the name of account holder Col. Gopinath Vajpayee, which has been transferred to his account by M/s Karmi Stock Brokering Limited. Further prayer had been made for directing IIFL Securities Limited to maintain *status quo* with respect to the fund under the trading account of late Sh. Gopinath Vajpayee.

10. Both the parties submit, that the requisite documents have already placed on record by IIFL and the requisite directions from maintaining *status qua* have also been granted.

11. The application is accordingly disposed of.

I.A.13374/2022 (for directions)

12. The present application under Section 151 CPC has been filed on behalf of the plaintiffs seeking directions to Axis Securities Limited to submit this Court the statement of stock holdings and cash balance lying in



the trading account in the name of Late Sh. Gopinath Bajpai that had been transferred from M/s Karmi Stock Brokering Limited to M/s Axis Securities Limited and also to direct M/s Axis Securities Ltd. to maintain the *Status quo* in respect of the trading account of late Gopinath Bajpai.

13. The learned counsel on behalf of the Axis Securities Limited seeks time to submit the details.

14. Axis Securities Limited is hereby directed to furnish the requisite records within four weeks and they shall maintain the *Status quo* in respect of the trading account.

I.A. 11516/2022 (for directions)

16. The present application under Order VIII Rule 1-A read with Section 151 CPC has been filed on behalf of defendant No.1 seeking to place on record the report of the handwriting expert in support of his assertions made in the written statement.

17. It is submitted in the application that this report dated 25.08.12, had been obtained after the written statement had already been filed and therefore may be permitted to file the same on record.

18. The learned counsel for the plaintiff submits that she has also placed on record the arbitration awards *inter se* the parties wherein, this handwriting report has already been considered and rejected.

19. **Submissions heard.**

20. The Report of the hand writing expert document had been received by the defendant after the filing of the written statement, the evidentiary value of this report cannot be ascertained at this stage.

21. The application is allowed and the document is taken on record.

I.A. 11517/2022 (Exemption)



22. The present application under Section 151 CPC has been filed seeking exemptions for filing a certified copy of the document of handwriting report is allowed and the application is accordingly disposed of.

I.A. 11518/2022 (for direction)

23. The present application under Section 151 CPC seeking condonation of delay of 239 days in re-filing the application.

24. In view of the submissions made in the application and in the interest of justice, the delay of 239 days in re-filing of the direction application, is condoned.

25. The application is allowed and disposed of accordingly.

I.A. 7246/2022 (for transposition)

26. The present application under Order 1 Rule 10 (2) read with Section 151 CPC has been filed on behalf of the respondent No.2, for transposition as the petitioner.

27. It is submitted in the application that Smt. Madhu Bajpai had died on 21.06.2021 and the present testamentary case has been filed seeking Probate in respect of the Will dated 09.06.2016 of Smt. Madhu Bajpai by the petitioner Sh. Rakesh Kumar Mishra. However, he has also died on 22.06.2021. Therefore, the respondent No.2, who is also a beneficiary under the Will, may be transposed as the petitioner.

28. Learned counsel for the respondent has no objection if the application is allowed.

29. Accordingly, the respondent no.2 is permitted to be transposed as the petitioner.

30. Amended memo of parties be filed.

31. The application is accordingly disposed of.



I.A. 7247/2022 (Condonation of delay)

32. The present application under Section 151 CPC has been filed on behalf of the respondent Nos. 2, 5 and 6, for condonation of delay of 78 days in re-filing the transposition application.

33. In view of the averments made in the application and in the interest of justice, the delay of 78 days in re-filing the transposition application, is condoned.

34. The application is allowed and disposed of.

I.A. 5763/2021 (for directions)

35. The present application under Section 151 CPC has been filed on behalf of the respondents Nos.3 and 4 with the prayer that her response to the counter affidavit filed by the respondent No.2, be permitted to be taken on record.

36. Learned counsel on behalf of respondent No.2, who is now transposed as the petitioner, submit that without prejudice to his right and contentions, the application may be allowed. Considering that this is a response filed by respondents Nos. 2 and 3 to the reply that was originally filed on behalf of respondent No.2 wherein certain averments which have been made against respondent Nos.3 and 4, which require rebuttal, the application is allowed and the response of respondent Nos. 3 and 4 to the counter-affidavit of R-2 is taken on record.

I.A.563/2021 (for passing of preliminary decree of partition in favour of parties to the present suit)

37. The present application under Order XII Rule 6 read with Order XX Rule 18 CPC has been filed on behalf of the plaintiff for passing of the preliminary decree as the facts are all admitted. However, Smt. Madhu



Bajpai, who was admittedly one of the legal heir entitled to 1/4th share, has died and left a Will bequeathing her share to the parties to the suit in the defined proportions, which is not acceptable to the plaintiff and a Pin respect of the Will is being contested along with the present suit.

38. The application cannot be considered at this stage, for the reasons stated above.

CS(OS) 412/2016

39. List before the Learned Joint Registrar on 18.03.2024 for recording of evidence.

NEENA BANSAL KRISHNA, J

JANUARY 24, 2024/PT