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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1155/2015 and I.A. 8755/2015, 1104/2017, 16787/2018, 5052/2019, 4152/2024**
SURRINDERJEET SINGH AHLUWALIA & ANR..... Plaintiffs
Through: Mr. Nitish Chaudhary Adv. with Mr. Chetan Lokur Adv. (M: 9810575121).

versus

JITENDARJIT SINGH AHLUWALIA & ANR Defendants
Through: Mr. Aseem Chaturvedi and Ms. Phalguni Nigam, Advocates for D-1 (M: 9873122789).
Ms. Kanika Agnihotri, Advocate for D-2 (M: 7008367072).

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **14.05.2024**

1. This hearing has been done through hybrid mode.

I.A. 8755/2015 (stay)

2. Interim order which is passed on 28th April, 2015 shall continue during the pendency of the suit.

3. Application is disposed of.

I.A. 4152/2024 (for consideration)

4. This is an application for consideration of **I.A.16787/2018**.

5. Application is disposed of.



I.A. 16787/2018 (for placing on record original Will)

6. This is an application filed on behalf of the Defendant No. 2 for placing on record the Will dated 20th September, 2009 which is stated to be executed by Mrs. Mohini Ahluwalia. The original will is directed to be produced. Ld. Counsel for Defendant no.2 submits that the same has been filed but it is not on record. Let the same be brought on record.

7. Application is disposed of.

I.A. 5052/2019 (u/O VI Rule 17 CPC)

8. This is an application on behalf of the Defendant No. 1 under Order VI Rule 17 CPC.

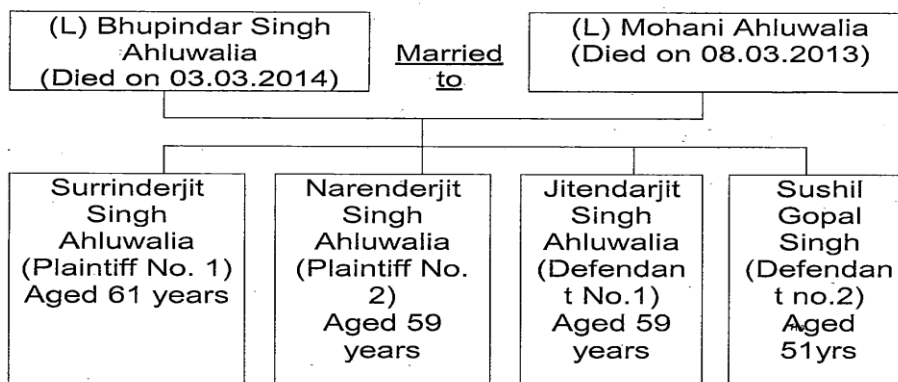
9. Application is disposed of.

I.A. 1104/2017 (u/O XII Rule 6 CPC)

10. This is an application under Order XII Rule 6 CPC on behalf of the Plaintiffs. Since the original Will is not on record, this application is adjourned to

CS(OS) 1155/2015

11. The present case is a family dispute where the parties are children of Late Mr. Bhupindar Singh Ahluwalia. The Plaintiffs- Mr. Surrinderjit Singh Ahluwalia and Mr. Narendarjit Singh Ahluwalia are stated to be the brothers of the Defendants. The pedigree table is extracted for a ready reference:



12. The Plaintiffs vide the present suit are *inter alia* seeking a decree of partition, declaration and injunction with respect to property- Flat No. B-50C (second floor) Gangotri Enclave, Alaknanda, New Delhi-110019 (*hereinafter, 'suit property'*). The case of the Plaintiffs is that the issues have been framed in the matter and evidence has commenced.

13. On 21st February, 2024, this Court had come to a *prima facie* opinion that this would be a fit case for passing a decree under Order XII Rule 6 CPC. Relevant portion of the order dated 21st February, 2024 is extracted hereinunder:

“3. After perusing the Defendants’ written statements, this would be a fit case for passing a decree under Order XXII Rule 6 CPC. However, the Defendants have filed two applications. One under Order VIII Rule 1 CPC read with Section 151 being **I.A.4152/2024** for considering the application **I.A.16787/2018** filed seeking to place on record a purported Will dated 20th September, 2009 which is stated to have been executed by the Testatrix -Mrs. Mohini Ahluwalia.”

14. The Defendants however now have filed two applications being **I.A.4152/2024** and **I.A.16787/2018**. The application **I.A.4152/2024** is filed on behalf of Defendant No. 2 under Order VIII Rule 1 CPC for considering



I.A.16787/2018. Further, **I.A.16787/2018** is also filed on behalf of the Defendant No. 2 for placing on record a copy of a purported Will dated 20th September, 2009 (*hereinafter*, 'Will') which is stated to be executed by Mrs. Mohini Ahluwalia.

15. According to the Defendants, as per the said Will the suit property has been bequeathed in favour of the Defendant No. 1. This is disputed by the Plaintiffs on the ground that the Will is a forged and fabricated document.

16. An application being **I.A. 5052/2019** under Order VI Rule 17 CPC has also been filed on behalf of the Defendant No. 1 seeking to amend the written statement.

17. In this case, the order sheets of the Court would show that Defendant No.1 has filed the written statement and Defendant No. 2 had adopted the said written statement vide order dated 16th December, 2015. Issues were framed in this matter on 29th March, 2016. The evidence of the Plaintiffs was going on. At that stage, the matter was considered for Mediation vide order dated 6th September, 2018, however, thereafter the predecessor Bench of this Court on 23rd October, 2018 took a strict view of the Defendants' conduct of trying to set up the Will. The said order is relevant and is set out below:-

"Learned counsel for defendant no.2 states that she has filed an application under Section 151 CPC for placing on record a copy of the Will dated 20th September, 2009 executed by deceased Mrs. Mohani Ahluwalia - mother of the parties.

It is pertinent to mention that on 04th September, 2018, this Court had directed the defendant nos. 1 and 2 to be personally present in Court on 05th September, 2018. The said direction was passed as the admitted position, after completion of pleadings, was that



neither of the parents of the parties had left behind a Will.

On 05th September, 2018, the defendant nos.1 and 2 had stated that the last wish of their mother was that the suit property should not devolve upon the plaintiffs. In response to a pointed query by this Court as to how the defendants could resist devolvment of the suit property upon the plaintiffs in the absence of a Will, the said defendants had admitted that no Will had been executed by their mother.

*This Court is recording the aforesaid facts as the learned counsel for defendant no.2 now states that the deceased mother has left behind a Will. **It is made clear that in the event the Will in question is found to be forged, this Court would take action against the defendants under Section 467 IPC. However, learned counsel for the defendants no.2 states that she has instructions to insist that the Will now sought to be produced is a genuine Will.***

18. As per the above order, the Court had observed that strict action would be liable to be taken against the Defendants under Section 467 IPC if the Will is found to be forged. However, Defendant No. 2 continues to state that the Will is a genuine Will. In furtherance of this, the order dated 21st February 2024, was passed wherein to give an opportunity to the Defendants to show that there is a genuine Will and to support the plea of the Defendants in the written statement, it was directed that the two witnesses in the Will shall appear before the Court. Relevant portion of the order is extracted hereinunder:

“6. Considering the nature of the dispute, it is deemed appropriate to direct Mr. Raj K. Singh (Address: C-81 FF, Malviya Nagar, New Delhi-110017) and Mr. Kapil Modi (Address: 15, Friends Colony (West), New Delhi-110065) who have signed as



witnesses, to appear before the Court on the next date of hearing. ”

19. Today, Mr. Raj K. Singh has joined the proceedings virtually and Mr. Kapil Modi, who is an Advocate has not joined the proceedings. Mr. Rohit Shukla Advocate, who is a colleague of Mr. Kapil Modi, Advocate submits that Mr. Kapil Modi, Advocate is in personal difficulty and is not able to appear today. Mr. Raj K. Singh submits that he is injured due to an accident and hence he could not appear physically.

20. The clear direction was for appearance before the Court today and not by virtual appearance. The matter relates to a Will. Virtual appearance of the witness is, therefore, of no avail. The Court has also considered the pleadings in this matter and observes that in paragraph 13 of the preliminary submissions made in the written statement, an oral agreement to sell by Mrs. Mohini Ahluwalia in respect of the suit property was set up in favour of Defendant No. 1. Relevant portion of the written statement on behalf of Defendant No. 1 is extracted hereinunder:

*“13. That the parents barely shared any bond with the Plaintiffs and considered the answering Defendant to be their sole son who used to take care of the parents at all times and especially during the time of their illness as well as attending to them of several decades. **That the owner of the suit property namely Mrs. Mohani Ahluwalia appreciating the acts of the answering Defendant in being the dutiful son sold the suit property by means of an oral Agreement to Sell to the answering Defendant** and the answering Defendant made payments by means all fixed deposits and other account transfers in favour of Mrs. Mohani Ahluwalia the said transaction can be corroborated by the statement of account of the answering Defendant as well as fixed deposit receipt being put on record by the*



answering Defendant. The said transaction took place in the presence of friends and well-wishers and they can be summoned by this Hon'ble Court at the relevant time to prove that the answering Defendant had lawfully purchased the said property from the mother for consideration paid by means of fixed deposit & funds in favour of Mrs. Mohani Ahluwalia as well as Mr. Bhupinder Singh Ahluwalia. Without prejudice to the above, and in view of the foregoing the answering Defendant was already the Special Power of Attorney holder and the General Power of Attorney holder of the original allottee i.e. Mr. Anurag Asthana and also an oral Agreement to Sell was executed in favour of the answering Defendant by his mother and the said facts clearly shows that the Plaintiffs have no right, title or interest in the suit property and the same vests solely with the answering Defendant.”

21. Thus, the purported Will which has now been set up is completely contrary to the written statement and the pleadings which are already on record. This would, in fact, amount to completely changing the stand and putting the suit back by almost eight years after the framing of issues. This would not be permissible in the opinion of this Court at the stage of evidence.

22. Accordingly, the prayer for amendment of the written statement is rejected. It is directed that the Defendants shall lead their evidence as per the pleadings on record in accordance with law. The Plaintiffs' evidence shall now continue from the stage from which it has been stopped.

23. It is submitted by Id. Counsel for Defendant No. 2 that the original Will was filed on 14th May, 2019 vide diary No. 453303. However, the same is not on record though two sealed covers have been sent to the Court. Documents which were sent to the Court in a sealed cover filed on behalf of



the Plaintiffs and Defendants be resealed and be sent to the Court again on the next date of hearing.

24. Ld. Counsel for the parties may take instructions on whether they would like evidence to be recorded by a Local Commissioner, as Plaintiff No. 1 is located in Netherlands.

25. If parties are not willing for evidence to be recorded by the Local Commissioner, the same shall proceed before the Joint Registrar.

26. List before the Joint Registrar for Defendants to produce the original Will on 9th July, 2024. After giving inspection, the same shall be taken on record.

27. List before the Court on 25th July, 2024.

PRATHIBA M. SINGH, J.

MAY 14, 2024
mr/rks