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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 1934/2015

ATUL SINGHAL

..... Plaintiff

Through: Mr. S.C. Singhal & Mr. Vishal
Singhal, Advs.

Versus

YOGESH SINGHAL @ YOGENDRA PAL

SINGHAL & ORS

..... Defendants

Through: Ms. Malvika Trivedi & Ms. Mallika
Ahluwalia, Advs.

AND

+ CS(OS) 445/2016 & IA No.10904/2016 (u/O XXXIX R-1&2 CPC)

YOGESH SINGHAL @ YOGENDRA PAL

SINGHAL @ YOGESH

..... Plaintiff

Through: Ms. Malvika Trivedi & Ms. Mallika
Ahluwalia, Advs.

Versus

ATUL SINGHAL & ORS.

..... Defendants

Through: Mr. S.C. Singhal & Mr. Vishal
Singhal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.02.2020

1. During the course of cross-examination of PW1 in CS(OS) No.1934/2015, by the counsel for the only contesting defendant no.1 therein; at the request of the plaintiff was ordered by the Joint Registrar on 22nd November, 2019 to be placed before this Court. It is the contention of the counsel for the plaintiff in CS(OS) No.1934/2015, that the counsel for the defendant no.1 is unnecessarily prolonging the cross-examination of PW1, by asking irrelevant question.

2. CS(OS) No.445/2016 is found to being listed along with CS(OS) No.1934/2015, without any proceedings taking place therein, though is

stated to be ripe for framing of issues.

3. CS(OS) No.1934/2015 is for partition of property No.435, Najafgarh, Inside Delhi Gate, Najafgarh, New Delhi, being the two-third share of a larger property and is *inter se* the heirs of one Rajinder Pal. The defendants no.2 to 6 therein (with defendant no.6 being South Delhi Municipal Corporation) are not contesting and it is only the defendant no.1 therein who is contesting.

4. Neither the plaintiff nor the defendant no.1 in CS(OS) No.1934/2015 have set up any Will of Rajinder Pal. It is thus not in dispute that the plaintiff and defendants no.1 to 5 in CS(OS) No.1934/2015 would have an equal share in the estate of Rajinder Pal. However it is the case of the defendant no.1, (a) that Rajinder Pal had only a one-third and not two-third undivided share in the larger property, of which property No.435, Najafgarh, Inside Delhi Gate, Najafgarh, New Delhi forms a part; (b) that the larger property originally belonged to one Mussadi Lal who died in or about the year 1940 leaving three sons viz. Munni Lal, Chunni Lal and Baijnath; (c) Baijnath had pre-deceased Mussadi Lal; (d) Rajinder Pal, father of the parties in CS(OS) No.1934/2015, though was borne to the son of Munni Lal aforesaid but was adopted by Chunni Lal; (e) that on demise of Mussadi Lal, Bhagwati Devi being the widow of Baijnath inherited one-third share in the property and which she has bequeathed by her registered Will in favour of defendant no.1 in CS(OS) No.1934/2015; (f) thus, Rajinder Pal as heir of Chunni Lal got only one-third share and not two-third share in the aforesaid property, as claimed by plaintiff.

5. It is also informed that probate sought of Will by Bhagwati Devi was dismissed but an appeal preferred thereagainst is pending and listed next before this Court on 3rd March, 2020.
6. I have enquired from the counsel for the defendant no.1 in CS(OS) No.1934/2015, that since Baijnath husband of Bhagwati Devi pre-deceased his father Mussadi Lal who himself died in 1940 i.e. prior to coming into force of the Hindu Succession Act, 1956, how did Bhagwati Devi inherit one-third share in the property to be able to bequeath the same under her Will even if any. I entertain doubts that Bhagwati Devi, on demise of Mussadi Lal inherited any part of the estate of Mussadi Lal save a right of residence in the properties and maintenance and could not have bequeathed the same by her Will. It appears that the counsels are litigating without considering the aforesaid aspect.
7. It is also informed that CS(OS) No.445/2016 has been filed by defendant no.1 in CS(OS) No.1934/2015 for partition of not only of the property subject matter of CS(OS) No.1934/2015 but also of several other properties of Mussadi Lal. It is however the case of the counsel for the plaintiff in CS(OS) No.1934/2015 that all the said properties have been sold and none of the properties of which partition is sought are existing.
8. There being no dispute with respect to shares in CS(OS) No.1934/2015 in any case, no trial therein is required.
9. The counsels to consider on the aforesaid lines.
10. List on 13th May, 2020.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 26, 2020

‘gsr’..

CS(OS) 1934/2015 & CS(OS) 445/2016

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