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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1728/2011, IA No.6958/2017 (u/O VI R-17 CPC), IA No.9853/2017 (u/S 151 CPC), IA No.11257/2011 (u/O XXXIX R-1&2 CPC), IA No.3400/2013 (u/O VII R-11 CPC), IA No.18894/2013 (for clarification of order dated 10th April, 2013) & IA No.2068/2015 (u/O VI R-16 CPC)
MUKTI DUTTA Plaintiff

Through: Mrs. Inderjeet Saroop, Adv.

Versus

VIJAY BHUSHAN (DECEASED THROUGH LRS)
& ORS Defendants

Through: Mr. Nikhil Rohatgi & Mr. Shashank Khurana, Advs. for D-1.
Mr. G. Tushar Rao, Mr. Mayank Sharma and Mr. Rajiv Kumar Trivedi, Advs. for D-17.
Mr. Ruchir Mishra & Mr. M.K. Tiwari, Advs. for D-18.

AND

+ TR.P.(C) 2/2014, IA No.6766/2014 (for stay) & IA No.20446/2014 (u/O XXXIX R-4 CPC)
VIJAY BHUSHAN & ORS Petitioners

Through: Mr. Nikhil Rohatgi & Mr. Shashank Khurana, Advs.

Versus

ARYA ANATHALAYA Respondent

Through: Mr. G. Tushar Rao, Mr. Mayank Sharma and Mr. Rajiv Kumar Trivedi, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.01.2018

1. CS(OS) No.1728/2011 is instituted against as many as 18 defendants, for i) declaration that the mutation dated 6th May, 1952 done by the

defendant no.18 Land & Development Office (L&DO) in favour of late Sh. Krishan Dutta with respect to property No.13, Barakhamba Road, New Delhi is null and void; ii) declaration that the Will dated 7th June, 1976 executed by Late Sh. Krishan Dutta bequeathing the property aforesaid in favour of defendant no.17 Arya Anathalaya @ Arya Orphanage is null and void; iii) declaration that the Probate / Letters of Administration of the Will dated 7th June, 1976 of late Sh. Krishan Dutta granted by the Court of the District Judge, Delhi is null and void as Sh. Krishan Dutta had no right to bequeath the suit property in favour of defendant no.17 Arya Anathalaya @ Arya Orphanage; iv) partition of the property by metes and bounds; and, v) permanent injunction restraining the defendant no.17 Arya Anathalaya @ Arya Orphanage from taking possession of and/or dealing with the said property.

2. Though the suit is pending for the last seven years, but no issues even have been framed as yet.

3. IA No.3400/2013 of the defendant no.17 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) and IA No.6958/2017 of the plaintiff under Order VI Rule 17 of CPC, besides a number of other applications, are for consideration.

4. In accordance with law reiterated in *Anita Kumar Gupta Vs. V. Ved Bhushan* 2014 SCC OnLine Del 2895, that an application for amendment of plaint even if filed after the filing of the application for rejection of the plaint, has to be decided before the application for rejection of the plaint, the counsels have been heard on the application of the plaintiff under Order VI Rule 17 of the CPC.

5. The counsel for legal representatives of defendant no.1 states that the interest of the plaintiff and the defendants no.1 to 16 is common; that the defendants no.1 to 16 are not contesting the suit and are supporting the plaintiff and it is only the defendant no.17 Arya Anathalaya @ Arya Orphanage which is contesting the suit.

6. As such, the counsel for the defendant no.1, duly supported by the counsel for the plaintiff, has been heard in support of the application for amendment of the plaint.

7. It is *inter alia* the case of the plaintiff in the plaint dated 20th August, 2011, that i) one Narain Dutta was the owner of property No.13, Barakhamba Road, New Delhi and lessee of the leasehold land underneath the same; ii) the said Narain Dutt died intestate in the year 1951 leaving his wife Karam Devi, his son Krishan Dutta and three daughters viz. Smt. Vidyawati, Smt. Kaushalya Devi Dhawan and Smt. Sumitra Sahai; iii) the plaintiff and the defendants no.1 to 16 are the heirs of the three daughters aforesaid of Narain Dutta; iv) Krishan Dutta son of Narain Dutta also died issueless in the year 1976 and his wife Rani Dutta died in the year 1993; v) Krishan Dutta left a Will dated 7th June, 1976 bequeathing the property to defendant no.17 Arya Anathalaya @ Arya Orphanage; vi) however since Narain Dutta died prior to coming into force of the Hindu Succession Act, 1956 but after the coming into force of the Hindu Women's Right to Property Act, 1937, his wife Karam Devi would also have a right of residence in the property and the inheritance by their son Krishan Dutta of the property would be subject to the said right of residence of Karam Devi; vii) on enactment of the Hindu Succession Act, 1956, vide Section 14

thereof, the said right of Karam Devi stood converted into an absolute right and thus Karam Devi and Krishan Dutta were the owners in equal share of the property; viii) thus under the Will dated 6th June, 1976 of Krishan Dutta, only his 50% share in the property would stand vested in the defendant no.17 Arya Anathalaya @ Arya Orphanage and the remaining 50% share, on demise of Karam Devi, would be inherited by her three daughters and whose legal heirs the plaintiff and the defendants no.1 to 16 are.

8. The plaintiff now seeks to carry out two amendments to the plaint.

9. The first amendment sought is in paras no.14,16 and 22 of the plaint as existing and the second amendment sought is with respect to the prayer paragraph of the plaint.

10. The plaintiff, in paras no.14,16 and 22 of the plaint, has *inter alia* referred to an earlier suit filed by Sumitra Sahai being one of the daughters aforesaid of Narain Dutta. It is on the basis of the said suit and withdrawal thereof that the defendant no.17 Arya Anathalaya @ Arya Orphanage is *inter alia* seeking rejection of the plaint averring the claim therein to be barred by Order XXIII Rule 2 of the CPC.

11. The plaintiff, in paras no.14,16 and 22 of the existing plaint, has *inter alia* pleaded that the summons of the suit filed by Sumitra Sahai were served on Vivek Dutta, father of the plaintiff who was the defendant no.2 in that suit and that the said Vivek Dutta, father of the plaintiff, being a person of reclusive and philosophical temperament and one who had chosen to live in Almora in a retreat, had not shared the details of the suit filed by Sumitra Sahai and / or the proceedings therein with the plaintiff.

12. The plaintiff, by way of amendment, now seeks to plead that she was under a mistaken belief that her father was served with the summons of the suit and wants to plead that her father was not served with the summons of the suit and / or wrongly proceeded against *ex parte* in the said suit.

13. Needless to state that the counsel for the defendant no.17 opposes the amendment contending that the same being in withdrawal of admission cannot be permitted and has relied upon ***Usha Balashaheb Swami Vs. Kiran Appaso Swami*** AIR 2007 SC 1683, ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons*** (2009) 10 SCC 84 and ***Modi Spinning & Weaving Mills Co. Ltd. Vs. Ladha Ram & Co.*** (1976) 4 SCC 320.

14. The counsel for the plaintiff in rejoinder, has relied upon ***Punjab National Bank Vs. Indian Bank*** AIR 2003 SC 2284.

15. The law in this regard is unequivocal, that amendment in withdrawal of admissions cannot be allowed, so much so that admission made with respect to title to property even has not been permitted be withdrawn inspite of subsequent discovery of documents of title of the property showing the admission to be contrary thereto. The law in this respect has been recently summarised in ***Gurcharan Kaur Vs. Ranjeet Singh Sandhu*** 2017 SCC OnLine Del 11489 and ***D.P. Mahajan Vs. Alok Mahajan*** 2017 SCC OnLine Del 12684. The plaintiff, in the plaint as existing in paras no.14 and 16, has unequivocally admitted service of summons of the suit aforesaid on all the defendants including on the father of the plaintiff and rather pleaded the circumstances in which the father of the plaintiff did not, notwithstanding the service of summons, contest the suit. The plaintiff, can be allowed to amend the plaint to withdraw the said admission.

16. As far as *Punjab National Bank Vs. Indian Bank* supra relied upon by the counsel for the plaintiff is concerned, the plaintiff in the suit for recovery therein had made the claim in US dollars equivalent to Indian rupees and the amendment sought was the deletion of the amount claimed in rupees as stated in the plaint. It was in this context that in para 15 of the judgment to which the counsel for the plaintiff has drawn attention, the Supreme Court held that since no fresh facts were being introduced and the amount claimed had already been stated in US dollars, the amendment should have been allowed. The question of withdrawal of admission by way of amendment did not arise for consideration in that case.

17. The first amendment sought thus cannot be allowed for this reason.

18. The second amendment as aforesaid is in the prayer paragraphs only.

19. In the prayer paragraphs no.(ii), (iii), (v) and (vi) in the plaint as existing, the plaintiff has referred to defendant no.17 as “Arya Anathalaya alias Arya Orphanage / Defendant no.17”. The counsel for the plaintiff has argued that the plaintiff has now learnt that Arya Anathalaya @ Arya Orphanage are not the same entity and thus the need for amendment.

20. It is further stated that the plaintiff learnt of the said fact when the defendant no.17 filed Certificate of Registration.

21. The counsel for the defendant no.17 opposes the said amendment by contending that the Certificate of Registration was filed seven years prior to the filing of the application for amendment and the amendment claimed is barred by time. It is further contended that the plaintiff, after the filing of the Certificate of Registration, had filed an application for amendment and

which was allowed but in which the said amendment was not sought. It is thus contended that the plaintiff, after the filing of the Certificate of Registration having sought amendment to the plaint and having at that time not sought the amendment as is now claimed on the basis of said Certificate of Registration, is estopped from claiming so. It is further contended that the Court, under Section 3 of the Limitation Act, 1963, is itself required to see whether the claim is within time.

22. As far as the objection of the counsel for the defendant no.17 on the ground of the amendment sought being barred by limitation is concerned, there is no period prescribed for seeking amendment and Supreme Court recently in *Rajkumar Bhatia Vs. Subhash Chander Bhatia* 2017 SCC OnLine 1480 has set aside the dicta of the High Court disallowing the amendment on the ground of the claim set up by way of amendment being untenable in law, by invoking the principle of merits of the amendment being not required to be gone into at the stage of amendment and that the Court at the stage of application for amendment being not entitled to consider whether the amended claim would be tenable on merits or not. Thus the amendment sought cannot be disallowed on the basis of bar of limitation as is suggested.

23. The counsel for the plaintiff has with respect to the filing of the Certificate of Registration seven years back, contended that the defendant no.17 had thereafter filed a written statement.

24. Once it has already been observed that the aspect of limitation cannot be gone into at this stage, the said question is also irrelevant.

25. I may notice, that the plaintiff in the memo of parties has described the defendant no.17 as Arya Orphanage only and not as Arya Anathalaya @ Arya Orphanage. In the body of the plaint also, the plaintiff has not referred to the defendant no.17 as Arya Anathalaya @ Arya Orphanage. It is only in the prayer paragraph of the plaint that the defendant no.17 has been described as aforesaid.

26. I have also enquired from the counsel for the plaintiff, whether under the Will, bequest is to Arya Anathalaya or Arya Orphanage.

27. The counsel for the plaintiff states that the bequest is to Arya Orphanage.

28. I have enquired from the counsel for the plaintiff as to how the aforesaid plea on the basis of which the second amendment aforesaid is sought is necessary for adjudication of the matter in controversy in the suit and on which anvil the application for amendment is to be considered.

29. The plaintiff, neither in the plaint as existing nor now by way of amendment, is pleading that it is somebody else who is claiming rights to the property. Rather as aforesaid, the plaintiff has impleaded Arya Orphanage to whom admittedly the bequest has been made under the Will.

30. Even if the plaintiff succeeds in the suit, the claim of the plaintiff is only to 50% in the property and the plaintiff and the defendants no.1 to 16 are not claiming any share in the 50% of the property qua which Will has been executed by Krishan Dutta. I may in this regard also observe that the reliefs claimed in the plaint, of declaration of the Will as null and void and declaration of the Probate / Letters of Administration granted of the said Will as null and void, are misconceived. A proceeding of Probate / Letters of

Administration does not decide title to the properties mentioned in the Will of which Probate / Letters of Administration is granted and also do not interpret the Will. [See *Sarla Gupta Vs. State* 2017 SCC OnLine Del 12689 and *Atula Basi Dasi Vs. Nirupama Devi* AIR 1951 Cal 561 (DB)] The reliefs (ii) and (iii) claimed in the plaint thus appear to be misconceived.

31. The counsel for the plaintiff has then contended that the plaintiff, in the replication to the written statement, has taken a plea of Arya Anathalaya being different from Arya Orphanage.

32. As aforesaid, the said controversy is alien to the subject matter of the suit.

33. The counsel for the plaintiff has attempted to suggest that in a suit filed by defendant no.17 against the plaintiff for recovery of possession of the portion of the property in possession of the plaintiff and the defendants no.1 to 16, the said question would be relevant.

34. It will be open to the plaintiff to take up the said plea in the other suit and the other suit cannot influence the decision of these applications.

35. However, since as per the memo of parties, it is Arya Orphanage which is defendant no.17 and since in the body of the plaint it is nowhere stated that Arya Orphanage and Arya Anathalaya are the one and the same person, the second amendment aforesaid is allowed, by permitting the plaintiff to delete the words 'Arya Anathalaya' from prayer paragraphs no.(ii), (iii), (v) and (vi) of the plaint.

36. IA No.6958/2017 is disposed of.

37. The counsel for the defendant no.17 has also been heard on IA No.3400/2013 under Order VII Rule 11 of the CPC.

38. The counsel for the defendant no.17 / applicant states that rejection of the plaint is sought on as many as five grounds.

39. Firstly, on the ground of the suit claim being barred by limitation. Secondly, on the ground of the suit claim being barred by Order XXIII Rule 1(4) of the CPC. Thirdly, on the ground of the suit claim being barred by Section 263 read with Section 299 of the Indian Succession Act, 1925. Fourthly, on the ground of the suit claim being barred by *res judicata*. Fifthly, on the ground of the suit claim being barred by Section 6 of the Hindu Succession Act, 1956.

40. I have straightaway enquired from the counsel for the defendant no.17, which Article of the Schedule to the Limitation Act is being invoked for contending the suit claim to be barred by time.

41. The counsel for the defendant no.17 has drawn attention to Article 65.

42. I have drawn the attention of the counsel for the defendant no.17 to the dicta of the Supreme Court in *Vidya Devi Vs. Prem Prakash* (1995) 4 SCC 496, *Mohan Lal Vs. Mirza Abdul Gaffar* (1996) 1 SCC 639, *Karnataka Board of Wakf Vs. Government of India* (2004) 10 SCC 779, *T. Anjanappa Vs. Somalingappa* (2006) 7 SCC 570 and *P.T. Munichiklanna Reddy Vs. Revamma* (2007) 6 SCC 59, *L.N. Aswathama Vs. P. Prakash* (2009) 13 SCC 229 and *Mandal Revenue Officer Vs. Goundla Venkaiah* (2010) 2 SCC 461 holding that the plea of lawful possession and adverse possession are mutually destructive and cannot be taken alternatively and have enquired, whether the defendant no.17 is claiming lawful possession or adverse possession.

43. The counsel for the defendant no.17 states that the case of the defendant no.17 is of lawful possession and not of adverse possession and gives up the ground of limitation for rejection of the plaint.

44. The bar of Order XXIII Rule 1 (4) CPC is invoked on the basis of the earlier suit aforesaid filed by Sumitra Sahai. It is argued that the said suit was filed by Sumitra Sahai for injunction restraining the defendant no.17 from taking possession of the property pursuant to grant of Probate / Letters of Administration.

45. It is further contended that Sumitra Sahai had in that suit filed an application under Order VI Rule 17 of the CPC to set up a plea, of the property, on the demise of Narain Dutta, having not been inherited exclusively by Krishan Dutta but which amendment was not allowed.

46. It is further contended that though Sumitra Sahai preferred an appeal against the denial of amendment but withdrew the said appeal and subsequently also withdrew the suit.

47. The counsel for the defendant no.17 has in Court handed over the judgment of dismissal of the application for amendment in the said suit reported as *Sumitra Sahai Vs. Arya Orphanage* 61 (1996) DLT 396 and which shows the amendment to have been declined on the ground that the suit as originally filed was on the basis of inheritance by Sumitra Sahai from Narain Dutta and the said Sumitra Sahai by way of amendment wanting to set up the plea of inheritance from her mother Karam Devi. It was held in para no.17 of the said judgment:

“17. The proposed amendment cannot be said to be a different approach on the same cause of action for obtaining the same relief, but is a separate and distinct cause of action. In other words, the plaintiff now wants to completely give up the plea, which she has taken in the original plaint that she had inherited to the estate of Narayan Dutta. After giving up that plea she now wants to set up a totally new case that she did not inherit the estate

on the death of Narayan Dutta, which was inherited by his son and widow. The estate inherited by the widow was limited estate, which ripened into full ownership on coming into force of [Hindu Succession Act](#), 1956 and thus on the death of widow she along with her two sisters and brother inherited the estate of Karam Devi. This claim is in fact a distinct cause of action from the one which was pleaded in the original plaint. Allowing such an amendment would not only cause material prejudice but also result in irreparable loss to the defendant and will render plea of limitation nugatory since as on the date of the filing of an application, the claim for the cause of action sought to be pleaded would definitely be barred, if a fresh suit on that cause of action has to be filed. Consequently, the application is dismissed.”

48. I have enquired from the counsel for the defendant no.17, whether not this Court in the judgment aforesaid has held the claim sought to be made by way of amendment to be constituting a distinct cause of action from the one which was pleaded in the original plaint and if so whether not on the said distinct cause of action, a separate suit can in any case be brought. It has further been enquired, whether the plaintiff is the successor of Sumitra Sahai.

49. The counsel for the defendant no.17 states that the plaintiff is not the successor of Sumitra Sahai but is a successor of defendant no.2 Vivek Dutta in the earlier suit, filed by Sumitra Sahai.

50. The counsel for the defendant no.17 is however unable to explain as to how the bar of Order XXIII Rule 1 (4) of the CPC would apply to a defendant in the suit. The earlier suit was not a suit for partition, for it to be said that all parties therein enjoyed the same status. It was clearly and simply a suit for permanent injunction and the bar of Order XXIII Rule 1 (4)

of the CPC cannot be invoked against the defendant.

51. There is thus no merit in the said plea either for rejection of the plaint.

52. Section 263 of the Indian Succession Act provides for revocation of a Probate / Letters of Administration.

53. I have already hereinabove observed that the plaintiff in this suit is not controverting the right of Krishan Dutta, of whose Will Probate was granted, to 50% of the property. All that the plaintiff is contending is that when Krishan Dutta executed a Will with respect to his assets and liabilities, the said assets included only 50% share in the property aforesaid and not the entire property. I have also hereinabove observed that the Probate proceedings are not concerned with the determination of title of the properties subject matter of the Will or with interpretation of the Will. The question of the plaintiff being relegated to the remedy of Section 263 thus does not arise.

54. The counsel for the defendant no.17 has contended that Section 263 of the Indian Succession Act permits the Probate / Letters of Administration granted to be revoked for just cause and which has been explained *inter alia* as, where the grant was obtained fraudulently by making a false suggestion. Attention is drawn to para no.6 of the plaint as existing, to contend that the plaintiff is pleading the Probate / Letters of Administration obtained to be fraudulent.

55. If in a Probate Case, the Court besides granting Probate / Letters of Administration, also goes into the said aspect, then perhaps the remedy of revocation would be appropriate remedy but it is not the case of the

defendant no.17 that the Probate / Letters of Administration granted of the Will of late Sh. Krishan Dutta decided question of title to the property aforesaid. A perusal of the Will dated 7th June, 1976 also shows the same to be with respect to the residential house and not prescribing any share therein. Thus, it cannot be said that the present suit whereby the plaintiff is agitating the Will to be only with respect to half share of Krishan Dutta is barred by Section 263 of the Act.

56. Section 299 of the Indian Succession Act, 1925 merely provides for the remedy of appeal against an order of the Probate / Testamentary Court and would in any case not bar the present suit or render the plaint therein to be rejected on the said ground.

57. There is thus no merit on the ground urged of the present suit being barred by Sections 263 and 299 of the Indian Succession Act.

58. The next ground taken, of *res judicata*, is again on the basis of the Sumitra Sahai suit. Sumitra Sahai suit as aforesaid was withdrawn and did not decide any lis and there can be no question of applicability of the principle of *res judicata*. I may also add that dismissal of an application for amendment cannot be said to be deciding the issue finally.

59. With respect to ground of Section 6 of the Hindu Succession Act, the counsel for the defendant has argued that the suit is barred by Section 6(1) of the Hindu Succession Act as amended in the year 2005.

60. I have enquired from the counsel for the defendant no.17, whether the plaintiff is claiming existence of any coparcenery. Section 6 supra is concerned only with coparcenary property.

61. The counsel for the defendant no.17 has drawn attention to para no.21

of the plaint as existing and which is as under:

“21. It is respectfully submitted that the order dated 18.1.1996 was not correct. It is further submitted that after the Women’s Right to Property came into existence in 1937, late Karam Devi had acquired right in the suit property by virtue of Intestate Succession, by becoming half owner of the suit property and in 1956 her daughters including late Sumitra Sahai had subsequently acquired right in the property and after the amendment in the year 2005 had right to seek partition in the suit property. The plaintiff further states that her right in the suit property has devolved from late Karam Devi, and therefore, has right to seek declaration of her right in the suit property apart from seeking partition of her right therein and other reliefs as are being claimed in the present suit.”

and has contended that the plaintiff is crystallising her rights from the amendment of the year 2005 to the Hindu Succession Act. He however admits that it is not the case of the plaintiff that the property was a coparcenary property.

62. In para no.21 of the plaint, the plaintiff has referred to the amendment of the year 2005 of the Hindu Succession Act only qua her right to claim partition of the property and not as creating any right in the property. The amendment of the year 2005 also deleted Section 23 of the Hindu Succession Act which prevented daughters from suing for partition of a dwelling house. Rather, I have enquired from the counsel for the defendant no.17, whether according to him, the property was coparcenary property as Section 6 of the Hindu Succession Act applies only to coparcenary property.

63. The counsel however states that the property was not a coparcenary property.

64. Once it is so, the question of invoking the ground of Section 6 of the Hindu Succession Act also does not arise.

65. There is no merit in IA No.3400/2013 under Order VII Rule 11 of the CPC, which is dismissed.

66. IA No.11257/2011 under Order XXXIX Rules 1&2 of the CPC has already been disposed of and be not shown in the cause list.

67. IA No.18894/2013 has been filed by the defendant no.17 for clarification that it is not barred by the interim order in force from permitting film shooting for a few hours or for a day in the portion of the property in its possession.

68. The application is disposed of clarifying in the affirmative.

69. IA No.2068/2015 has been filed by the defendant no.17, under Order VI Rule 17 of the CPC, for deletion of portions of the reply by the plaintiff to another application of the defendant no.17 and which has already been disposed of. It is stated that in the said portions, comments have unnecessarily been made against Mr. Viresh Pratap Chaudhary, Senior Advocate and Sh. Nitinjya Chaudhary, Advocate.

70. Recording the statement of the counsel for the plaintiff, that no disrespect was meant to either of the said persons, IA No.2068/2015 is disposed of.

71. It is deemed appropriate to also frame issues in the suit since the facts have been thrashed out while dealing with the applications.

72. On the pleadings of the parties, the following issues are framed in the suit:

(i) Whether on the demise of Sh. Narain Dutta in the year 1951,

his wife Karam Devi acquired any rights in property No.13, Barakhamba Road, New Delhi and if so, to what effect? OPP

- (ii) Whether the plaintiff or the defendants no.1 to 16 are barred from claiming any rights in the property on account of their predecessors having submitted No Objection Certificates to the petition for Probate filed of the Will of Krishan Dutta, son of Narain Dutta? OPD17
- (iii) Whether the suit claim is barred by time? OPD17
- (iv) Whether the Karam Devi was disentitled from inheriting any share in the property from her husband Narain Dutta on account of Arbitral Award of the year 1979? OPPr
- (v) Whether the predecessor of the plaintiff and the defendants no.1 to 16 abandoned their rights if any in the property? OPD 17
- (vi) Whether the plaintiff has not paid appropriate court fees on the plaint owing to being not in possession of any part of the property and if so, to what effect? OPD17
- (vii) If the plaintiff succeeds in the aforesaid issues, what are the respective shares of the parties in the property? OPPr
- (viii) Relief.

73. Though in the proposed issues of the plaintiff as well as defendant no.17, a large number of other issues have been proposed but the same are not found to be arising from the pleadings and / or are not required to be framed in view of the above order.

74. No other issue arises or is pressed.

75. The parties to file their list of witnesses within 15 days from today.

76. The counsel for the plaintiff is unable to answer, whether the plaintiff desires evidence to be recorded on commission.

77. The plaintiff to file affidavits by way of examination-in-chief of its witnesses within six weeks.

78. It is clarified that after the evidence of the plaintiff, if any of the defendants no.1 to 16 desire to tender any evidence, they will tender evidence first before defendant no.17 and the witnesses of the plaintiff and defendants no.1 to 16 shall be cross-examined first by the counsels for the plaintiff / other defendants and thereafter by the counsel for the defendant no.17.

79. List before the Joint Registrar on 19th March, 2018, for fixing the date of recording of evidence.

TR.P.(C) No.2/2014

80. Transfer is sought of a suit filed by defendant no.17 Arya Orphanage against Narain Dharmarth Aushdhalaya Trust and pending in the Court of Devender Kumar, ADJ-04, Patiala House Courts, New Delhi to this Court for trial along with the present suit.

81. Narain Dharmarth Aushdhalaya Trust is not a party to this suit and the Transfer Petition is misconceived.

82. There is also no merit in the contention of the counsel for the petitioner in the Transfer Petition, of all the trustees of Narain Dharmarth Aushdhalaya Trust being parties to the present suit. Once the property has been given to Narain Dharmarth Aushdhalaya Trust, the dealing of the said property by the individuals, even if as Trustees, would and not be in their individual capacity in which they are parties to the present suit.

83. Transfer petition is dismissed.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2018

‘gsr’ ..CS(OS) 1728/2011 & TR.P.(C) 2/2014

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