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

+ CS(OS) 713/2011

SHIV SAHNI

..... Plaintiff

Through: Mr. Nikhil Rohatgi, Advocate with
Mr. Mohit Khubchandani, Advocate.

versus

ISHERDAS SAHNI & BROTHERS & ORS

..... Defendants

Through: Ms. Rachna Agrawal, Advocate for
defendant Nos.1 to 8.
Mr. Ateka Khan, proxy counsel for
defendant No.9.
Mr. Vikas Dhawan, Advocate with
Mr. Abhijit Mittal, Advocate, Mr.
Dhruv Rohatgi, Advocate and Mr.
Satyabrata Panda, Advocate for
defendant No.11.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **25.04.2016**

O.A. No.280/2015 (against order dated 2.7.2015)

1. This O.A. is filed impugning the order of the Joint Registrar dated 2.7.2015 by which the Joint Registrar has allowed the I.A. No.10739/2015 filed by the defendant no.11 for taking on record the registered Will dated 9.11.2010 of the defendant no.10, namely late Smt.

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Neena Sahni and which defendant no.10 expired during the pendency of the suit.

2. The subject suit is a suit filed by the plaintiff Mr. Shiv Sahni claiming rights as a partner in the defendant no.1 firm M/s Isherdas Sahni & Bros. Defendant no.1 is represented by its partners the defendant nos.2 to 8. Originally only these eight defendants were parties to the suit but on the very first date of hearing of the suit at the request of the plaintiff, defendant nos.9 to 11 namely Mr. Jayant Sahni, Ms. Neena Sahni and Ms. Renee Khanna were impleaded. These defendant nos.9 to 10 were impleaded inasmuch as there was an issue as to whether plaintiff is a partner in the defendant no.1 firm in his individual right or he represents Mr. K.L. Sahni HUF in the defendant no.1 firm. Plaintiff thereafter filed I.A. No.5787/2011 for deleting the names of defendant nos.9 to 11, however, that application was dismissed by an order dated 31.10.2012 by a learned Single Judge of this Court. Therefore, the position which emerged as on 31.10.2012 was that whether or not plaintiff is the partner in his individual right or he represented the HUF firm of Mr. K.L. Sahni was to be decided at the stage of final arguments in view of the respective contentions of the parties.

3. In my opinion, filing of the application being I.A. No.10739/2015 by defendant no.11 is putting cart before the horse. This application is filed to take on record the Will dated 9.11.2010 of late Smt. Neena Sahni but till date there is no application filed by either of the parties for brining on record the legal heirs of defendant no.10/Smt. Neena Sahni. Admittedly, by the Will dated 9.11.2010 the share of defendant no.10 is pleaded to be inherited by defendant no.11 subject of course to the defendant no.11 proving this Will. However, the Will will only help to establish the issue of devolution of estate of late defendant no.10 and therefore the Will is a document relevant with respect to an application to be filed under Order 22 Rule 4/10 of Code of Civil Procedure, 1908 (CPC) as also for getting the final relief at the stage of final arguments in the suit for representing the estate of defendant no.10 so far as subject matter of the disputes in the present suit is concerned.

4. The Joint Registrar and indeed the parties have overlooked this vital fact that the application I.A. No.10739/2015 could only have been a successor application and not a precursor application under Order 22 Rule 4/10 CPC and accordingly the Will dated 9.11.2010 would only be relevant

for the representation of the estate of defendant no.10 by the defendant no.11, but there was no application pending as on date of the filing of the impugned order dated 2.7.2015 for representing the estate of the defendant no.10 by the defendant no.11.

5. Accordingly, this O.A. is allowed and disposed of with the directions that the impugned order dated 2.7.2015 is set aside however I.A. No.10739/2015 will be taken to be remain as pending and will be decided in accordance with law in case an application is filed for substitution and representation of the estate of the defendant no.10 by the defendant no.11, and at which stage the Will dated 9.11.2010 will be considered in support of the application under Order 22 Rule 4/10 CPC for representation of the estate of the defendant no.10 by defendant no.11. Of course, I am making no observations as to the merits of the application under Order 22 Rule 4/10 CPC for representation of the estate of the defendant no.10 by any person including defendant no.11, and such aspect with all related aspects will be decided as and when an application is filed for representation of the estate of the late defendant no.10 Smt. Neena Sahni.

O.A. is disposed of with the aforesaid observations.

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6. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge, Patiala House Courts, New Delhi.

7. Let parties appear before the District & Sessions Judge, Patiala House Courts, New Delhi on 26th May, 2016. Suit file be made available to the District & Sessions Judge, Patiala House Courts, New Delhi on the date fixed.

VALMIKI J. MEHTA, J

APRIL 25, 2016
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