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

+ **CS(OS) 159/2016**

SHAIL BALA AND ANR Plaintiffs

Through: Mr. Manan Verma, Adv.

Versus

ANAND KAUR AND ORS Defendants

Through: Ms. Anu Gupta & Mr. F.L. Rajput,
Advs. for D-1,2&5.

Ms. Roshni Singh & Ms. Diksha Rai,
Advs. for D-3,4&6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.09.2016**

IA No.7124/2016 (of the plaintiffs under Order VI Rule 17 CPC)

1. The counsel for defendants no.1,2 and 5 states i) that the two plaintiffs, claiming to be the wife and daughter of late Sh. Harinder Singh, have filed this suit for partition of the properties left behind by Sh. Harinder Singh, against the brothers and sisters and deceased brother's and sister's heirs of Sh. Harinder Singh, for partition and permanent injunction; ii) though Sh. Harinder Singh was married to the plaintiff no.1 but the marriage lasted barely for a few months and divorce proceedings between the plaintiff no.1 and Sh. Harinder Singh were pending but divorce not granted; iii) that Sh. Harinder Singh in accordance with the custom married defendant no.1 being the widow of his elder brother and from the said wedlock one son named Prince Choudhary was borne; iv) that Sh. Harinder Singh left a Will bequeathing his entire estate to the said son Prince Choudhary; v) that the plaintiffs have thus not inherited any part of the estate of Sh. Harinder

Singh; vi) Prince Choudhary has instituted probate proceedings with respect to the said Will and which proceedings are pending in the District Court, Rohini; vii) that the plaintiffs have also instituted a suit in the District Court, Rohini for cancellation of the aforesaid Will and which is also pending consideration; viii) that the plaintiffs though initially instituted this suit with respect to one property only, in District Court, Rohini but upon objection being taken by the defendants as to valuation, the suit has come to this Court; ix) that the plaintiffs have now filed this application to include other properties also of Sh. Harinder Singh situated in Uttar Pradesh; x) that the plaintiffs however neither in the plaint as originally filed nor by way of amendment are seeking to implead the aforesaid Prince Choudhary and without whom the suit is misconceived.

2. The counsel for the plaintiffs seeks to withdraw this application with liberty to file afresh.

3. Dismissed as withdrawn with liberty aforesaid.

IA No.4721/2016 (of the defendants no.1&2 under Order VII Rule 10 and 11 CPC)

4. The counsel for the defendants no.1,2 and 5 states that this application was disposed of when the suit was pending before the District Court, Rohini.

5. Be not shown in the cause list.

IA No.4722/2016 (of the defendants no.1&2 under Order VI Rule 17 for amendment of the written statement)

6. The counsel for the defendants no.1,2 and 5 states that this application has also been disposed of.

7. Be not shown in the cause list.

IA No.4723/2016 (of the defendants no.1&2 under Order VII Rule 10 and 11 CPC)

8. The counsel for the defendants no.1,2 and 5 states that this application has also been disposed of.

9. Be not shown in the cause list.

IA No.4724/2016 (of the defendant no.5 for amendment of written statement)

10. The counsel for the defendants no.1,2 and 5 states that this application has also been disposed of.

11. Be not shown in the cause list.

IA Nos.10869/2016 & 10870/2016 (of the defendants no.1,2&5 for condonation of delay in filing replies to IA No.7125/2016 and IA No.7124/2016)

12. IA No.7124/2016 having been withdrawn, IA No.10870/2016 is disposed of as infructuous.

13. The delay in filing reply to IA No.7125/2016 is condoned.

14. IA No.10869/2016 is disposed of.

IA No.7125/2016 (of the plaintiffs under Order XL Rule 1 CPC)

15. Since the probate is pending and the plaintiffs are parties in probate, this application is dismissed with liberty to the plaintiffs to seek relief if any from the probate Court.

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16. It appears that the proceedings in this suit will have to await the probate inasmuch as if probate is granted, the plaintiffs would have no right to partition.

17. The suit is disposed of with liberty to the plaintiffs to apply for revival in the event of the decision in the probate case and in the suit filed by the plaintiffs and pending in the District Court, Rohini being in favour of the plaintiffs. Needless to state that if the said decision is against the plaintiffs, the plaintiffs would not inherit any share in the estate of Sh. Harinder Singh and would have no claim for partition as made in this suit and the suit shall stand dismissed.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2016

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