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

CS(OS) 2359/2015

RENU MEHTA & ORS

..... Plaintiffs

Through: Mr. Muneesh Malhotra and Mr. Ritu  
Raj Shahi, Advs.

Versus

MADHU PURI & ORS

..... Defendants

Through: Mr. Varun Chawla, Adv. for D-1.  
Mr. Akhil Mittal, Adv. for D-2.  
Mr. Nilendu Vatsyayan, Adv. for D-6.

**AND**

+ TR.P.(C) 21/2015 & 24370/2015 (for exemption)

RENU MEHTA

..... Petitioner

Through: Mr. Muneesh Malhotra and Mr. Ritu  
Raj Shahi, Advs.

Versus

MADHU PURI & ORS

..... Respondents

Through: Mr. Varun Chawla, Adv. for R-1.  
Mr. Akhil Mittal, Adv. for R-2.  
Ms. Sana Ansari, Adv. for Ms. Isha  
Khanna, Adv. for R-6.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**03.08.2016**

1. The four plaintiffs have sued for partition of the estate of their parents Sh. Ascharaj Lal Dham and Smt. Meena Dham who died leaving, besides the four plaintiffs, the defendants No.1&2 as their only children.

2. The estate of which partition is sought is listed in the prayer paragraph at pages 31 & 32 of the plaint dated 6<sup>th</sup> August, 2016 and comprises of as many as (i) to (vi) immovable properties, two businesses namely Elite Surgical Industries and M/s. Pradeep Surgical Corporation listed at serial No.(vii) & (viii) and monies in the bank accounts and safe deposit locker mentioned at serial No.(i) to (v).
3. The defendant No.1 though has filed a written statement but the counsel states that he is supporting the plaintiffs.
4. The written statement of defendant No.2 who is the only son of Sh. Ascharaj Lal Dham and Smt. Meena Dham and the replication of plaintiffs thereto is on record.
5. The counsel for the defendant No.2 on enquiry states that according to the defendant No.2 (a) Flat No.3/206, Pankaj Chamber, Preet Vihar belong to the defendant No.2 and mother; (b) 1121 Ansal Tower, 38 Nehru Place belonged to the HUF of the father; (c) 99-B, Jhandewalan, Cycle Market belonged to the father and another; (d) I-69, Kirti Nagar belonged to the father; (e) the property at Bhgirath Place and Old Lajpat Rai Market Were in the tenancy of the father; (f) the business of Elite Surgical Industries was of defendant No.2 and one Smt. Namrata Sharma; (g) the business of M/s Pradeep Surgical Corporation was the sole proprietary of the father; (h) the bank accounts and the safe deposit locker were in the name of the father and / or mother.
6. The defendant No.2 has set up a Will of the father bequeathing the immovable properties and business of M/s Pradeep Surgical Corporation to the defendant No.2.

7. The plaintiffs are disputing the said Will.
8. It is also stated that the defendant No.2 has filed a petition seeking probate of the Will of the father and which is pending in the Court of Sh. Sanjay Kumar, Additional District Judge (ADJ), West District, Tis Hazari Courts, Delhi and for transfer of which to this Court to be tried alongwith this suit TR.P.(C) No.21/2015 supra has been filed.
9. The counsel for the defendant No.2 states that though according to the defendant No.2 the mother Smt. Meena Dham also left a Will but since the original Will is not being found, the defendant No.2 gives up the claim on the basis of the Will of the mother and the suit be proceeded as if the mother died intestate.
10. It is ordered accordingly. Probate Case No.20/2015 titled ***Pardeep Dham Vs. State & Ors.*** of the Court of Sh. Sanjay Kumar, ADJ, West District, Tis Hazari Courts, Delhi stated to be listed next on 24<sup>th</sup> August, 2016 is ordered to be transferred to this Court to be tried along with CS(OS) No.2359/2015.
11. TR.P.(C) 21/2015 is disposed of.
12. Though the probate petition is not before this Court but that does not come in the way of this Court framing consolidated issues.
13. On the pleadings of the parties and in supersession of the issues if any framed in the probate petition, the following consolidated issues are framed:
  - (A) Whether the document dated 30<sup>th</sup> April, 2012 is the validly executed last Will of the father of the plaintiffs and the defendants No.1&2? OPD-2

(B) Whether the father of the plaintiffs and the defendants No.1&2 was the sole proprietor of the business in the name and style of Elite Surgical Industries? OPP

(C) What are the shares, if any of the plaintiffs and the defendants No.1&2 in the properties qua which the suit for partition is filed? OPP

(D) Relief.

14. No other issue arises or is pressed.

15. The parties to file their list of witnesses within fifteen days.

16. The onus of the main issue being on the defendant No.2, defendant No.2 to lead evidence first.

17. The defendant No.2 to file affidavits by way of examination-in-chief of his witnesses within eight weeks.

18. The counsel for the plaintiffs has been given an option to have the evidence recorded before the Court Commissioner but has not instructions.

19. The counsel for the plaintiffs states that he gives up defendants No.3 to 6 namely ICICI Bank, UCO Bank, Rajendra Place, UCO Bank, Ajmal Khan Road and Canara Bank.

20. The defendants No.3 to 6 are deleted from the array of parties.

21. An endorsement to the said effect be made under the signatures of the Court Master in today's date.

22. List before the Joint Registrar on 6<sup>th</sup> October, 2016 for fixing the dates of trial.

23. The date of 28<sup>th</sup> September, 2016 before the Joint Registrar is cancelled.

**IA No.16107/2015 in CS(OS) No.2359/2015 (of plaintiffs u/O 39 R-1&2 CPC)**

24. The counsel for the plaintiffs states that he is not pressing the application.

25. Dismissed as not pressed.

**IAs No.16108/2015 (of plaintiff No.4 u/O 39 R-1&2 CPC) & 23873/2015 (of P-4 u/O 39 R-1&2 CPC) in CS(OS) No.2359/2015**

26. The defendant No.2 is receiving rent of Flat No.3/206, Pankaj Chamber, Preet Vihar, New Delhi which according to the defendant No.2 also was owned by the defendant No.2 and the mother as well as of 1121 Ansal Tower, 38, Nehru Place, New Delhi which according to the defendant No.2 belonged to the HUF of the father.

27. The counsel for the defendant No.2 states that the first of the aforesaid properties is fetching rent of Rs.21,000/- per month and the latter property is fetching rent of Rs.36,774/-.

28. The defendant No.2 is directed to, within three months herefrom, deposit in the bank account of which particulars will be furnished by the counsel for the plaintiffs to the counsel for the defendant No.2 within ten days hereof, 50% of the rent earned for the period from 1<sup>st</sup> August, 2015 till 31<sup>st</sup> July, 2016 of Flat No.3/206, Pankaj Chamber, Preet Vihar and the entire rent earned of 1121 Ansal Tower, 38, Nehru Place from 1<sup>st</sup> August, 2015 to 31<sup>st</sup> July, 2016 and to with effect from the month of August, 2016 continue to deposit in the said account, month by month within ten days of the receipt of the rent by the defendant No.2 of the said two flats, 50% of the rent of the Pankaj Chamber flat and entire rent of the Ansal Tower flat.

29. The defendant No.2 is also restrained from hereinafter alienating, encumbering or parting with possession of the immovable properties subject matter of the suit and all parties are restrained from operating the bank accounts / safe deposit locker with respect to which the suit is filed.

30. The defendant No.2 is also restrained from dispossessing the plaintiff No.4 from possession of I-69, Kirti Nagar, Delhi or from causing any disturbance in the plaintiff No.4's use and occupation of the said property.

31. The counsel for the defendant No.2 states that though the defendant No.2 was earlier residing in the same property but has since shifted to another property.

32. It is however clarified that the plaintiff No.4 will not trespass into the portions locked by the defendant No.2.

33. The applications are disposed of.

**IA No.2819/2016 in CS(OS) No.2359/2015 (of P-4 for early hearing)**

34. This application has become infructuous and is disposed of.

**RAJIV SAHAI ENDLAW, J.**

**AUGUST 03, 2016**

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