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

+ **FAO(OS) 344/2016**

Date of decision: 10th July, 2017

GITA SARAN SINGH & ANR Appellant
Through Ms. Manmeet Arora, Mr. Rishabh
Bansal and Mr. Tarang Gupta, Advocates.

versus

SABITA UBEROI Respondent
Through Mr. Samar Bansal, Advocate for R-1.
Ms. Tania Sharma and Ms. Saumya Parmarthi,
Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL)

C.M. Nos.44284/2016 & 44285/2016

Counsel for the respondents states that they do not oppose these applications seeking condonation of delay in filing and re-filing.

The applications are allowed and the delay of 48 days in filing and 6 days in re-filing is condoned.

FAO(OS) 344/2016

This intra-Court First Appeal filed under Order XLIII read with Section 104 of the Code of Civil Procedure, 1908 impugns order dated 9th August, 2016 passed in I.A. Nos. 9567/2016 and 9568/2016. In the prayer

clause, the appellant has also impugned order dated 19th September, 2016, dismissing I.A.No.11442/2016. This application was filed for modification/clarification/correction of the order dated 9th August, 2016.

2. The appellant-Geeta Saran Singh in fact has partly impugned order dated 9th August, 2016, which had disposed of I.A. No.9567/2016 for amendment of the plaint and I.A. No.9568/2016 under Order XI Rule 12 of the Code.

3. The impugned order notices the nature of amendments sought and has crystallized the same in paragraph 5, which reads as under:-

“5. The plaintiff, by of amendment (i) wants to place particulars of certain properties which according to the plaintiff also form part of the estate of father; (ii) wants to incorporate a claim for partition of the moveable estate of the mother; (iii) wants to take additional pleas to challenge the Will set up by the defendant no.1 and to file documents in support thereof; and, (iv) elaborate on the plea on which this bench had declined to frame issue and which order has been set aside by the Division Bench.”

4. Thereafter, the impugned order dated 9th August, 2016 records that vide earlier order dated 8th February, 2016, the appellant has been granted liberty to raise the question of rendition of accounts in respect of the estate of the late father, which had not been statedly disclosed by the contesting defendant No.1, namely, Sabita Uberoi, who is respondent No.1 in this

appeal. We may note that there is another sibling namely, Asha Bhalla, who it is stated substantially supports the appellant.

5. The impugned order records that as far as the plea with regard to properties, which were left behind by the father, the same had been already addressed, inasmuch as the appellant would have the benefit of the order dated 8th February, 2016. To this extent, in fact, the appellant has not raised any grievance. With regard to the Will propounded by the respondent No.1, the impugned order records the statement made by the said respondent that he would be leading evidence in support of the Will. Issue in this regard has already been framed and the parties would be entitled to lead evidence in respect of the circumstances and facts pleaded by the appellant in support of his contention challenging the Will. To this extent also the impugned order does not require any interference as rights of the appellant are protected. No ground for interference is made out.

6. The sole aspect raised by the appellant relates to the estate left behind by the mother. The impugned order records that the appellant and respondent No.1 had stated that they had no objection in case the appellant files a separate suit qua the estate of the mother. The counsel for the appellant as recorded in the order dated 9th August, 2016 had accepted that

this was agreeable. It was a consent order. Accordingly, it was directed and held while disposing of the application for amendment that the appellant would be entitled to file separate proceedings in respect of the estate of the mother.

7. On this aspect i.e., the estate of the mother, the appellant had thereafter filed I.A. No. 11442/2016. This application states that the mother had joint accounts with father and single bank accounts. She had jewellery, FDRs etc. The appellant has given some details but it is accepted and admitted that full particulars with regard to jewellery, FDRs etc., were/are not available and discovery as per the appellant would be necessary. The mother, it is pointed out, did not own any immovable asset. Pertinently, the application I.A. No.11442/2016 did not have an averment that the counsel for the appellant had not made the statement as recorded in the order dated 9th August, 2016 to the effect that the appellant would file a separate suit in respect of the estate of the mother. I.A. No.11442/2016 was dismissed vide order dated 19th September, 2016 stating that the matter cannot be re-heard or reviewed in this manner. Counsel for the parties should have either urged or not made the statement at the time when the application for amendment was disposed of on 9th August, 2016.

8. Having heard counsel for the appellant and the respondent No.1 and in the facts of the present case, we are not inclined to interfere with the two impugned orders.

9. As noticed above, the mother had not left behind any immovable asset and, as per the appellant she had left behind moveable assets. Pertinently, the mother had expired on 6th July, 2001 and the father, whose estate is a subject matter of CS (OS) 189/2008, had died subsequently on 3rd August, 2002. Even with regard to the estate of mother, the appellant is not clear as to what was left behind by her. As recorded above, the appellant states that discovery would be required. The father, as per the appellant, had left behind immovable properties including two residential flats in Defence Colony, which are in possession of the appellant and respondent No.2, respectively. The first respondent, it is stated, is collecting rent in respect of the commercial immovable property located in Safdarjung Development Area. The suit was filed in the year 2008 and the amendment application was filed in the year 2016. Allowing the amendment application will result in re-start of the entire process of filing of written statement, replication, documents, discovery and take back the suit by about 8-9 years. We are informed that the parties had agreed that evidence in the suit should

be recorded before the Local Commissioner and one year's time was fixed for the said purpose as recorded in the order dated 9th August, 2016.

10. Counsel for the appellant accepts that the appellant may have a legal right to file a civil suit in respect of the estate of the mother. She submits that estate of the mother was inherited by father also, and disputes relating to inheritance from mother should be decided in the present suit. However, it is accepted that the main issue is regarding the estate of the mother, i.e. the assets left by her. This is a separate and distinct issue, which can be adjudicated independently and not necessarily in this case. Inheritance by the appellant and the respondent Nos.1 and 2, and the late father in equal share is accepted. The issue of Will of the father is subject matter of the present case. Once the said issue is decided either in favour of the appellant or in favour of the first respondent, it would decide and adjudicate dispute on the question of inheritance of the estate of the father.

11. Counsel for the appellant has drawn our attention to the judgment of the Supreme Court in *Sampath Kumar Vs. Ayyakannu and Anr.*, (2002) 7 SCC 559 in support of his submission that even if a fresh suit is maintainable, the amendment application could have been allowed. In the said case, the plaintiff had filed an application for amendment in a suit for

permanent prohibitory injunction seeking declaration of title and consequential relief of the delivery of possession. In the aforesaid circumstances, the Supreme Court had allowed the plaintiff by amendment to convert the suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. Judgment in ***Sampath Kumar*** (*supra*) is not of any assistance and help to the appellant in the present case. In the facts of the present case, we are of the opinion that the single Judge was right in observing that the appellant should file a separate claim for partition of moveable assets of the mother. The said position was then accepted by the counsel for the appellant. We do not think that it will be appropriate and proper to interfere with the said consent order, which we find is just and fair.

12. Recording of evidence before the Local Commissioner would resume immediately. Parties will appear before the Local Commissioner on 11th August, 2017, when a date will be fixed. The appeal is disposed of with the aforesaid observations. No order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

JULY 10, 2017/NA