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

CS(OS) 2419/2012 & IA No.12844/2018 (of D-1 for consolidation of suits)

SANTOSH CHAUDHARI Plaintiff
Through: Mr. Abhinav Jain and Ms. Shikha Sapra, Advs.

Versus

KAILASH CHANDER VERMA & ANR Defendants
Through: Mr. K.R. Chawla and Mr. Sunil Verma, Advs. for D-1.
Mr. Prateek, Adv. for D-2.

AND

+ CS(OS) 294/2016 & IAs No.7238/2016 (u/O XXXIX R-1&2 CPC) & 3849/2017 (u/O XXII R-4&9 CPC)

GAUTAM VERMA Plaintiff
Through: Mr. Prateek, Adv.

Versus

KAILASH CHANDER VERMA Defendant
Through: Mr. K.R. Chawla and Mr. Sunil Verma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.12.2018

1. CS(OS) No.2419/2012 was filed for partition of property No.F-7/5, Vasant Vihar, New Delhi.

2. On enquiry, the counsel for Smt. Santosh Chaudhari, the counsel for Kailash Chander Verma as well as the counsel for legal heirs of Ramesh Verma state, (i) that the said property belonged to Rajeshwar Verma, who died leaving Shakuntala Verma as his wife, Smt. Santosh Chaudhary as his

daughter and Kailash Chander Verma and Ramesh Verma as his sons, as his only natural heirs; (ii) that the said Rajeshwar Verma left a Will dated 14th June, 1977 whereunder he bequeathed the property equally to his widow, daughter and two sons; (iii) that all the parties admit to the Will dated 14th June, 1977 of Rameshwar Verma and do not dispute the same inasmuch as, even without the Will the share of the parties i.e. widow, daughter and two sons would be equal; (iv) that it is however the claim of Kailash Chander Verma that the mother Shakuntala Verma has left a Will dated 27th September, 2005 bequeathing her 1/4th share exclusively to Kailash Chander Verma; and, (v) that Santosh Chaudhary as well as the legal heirs of Ramesh Verma are disputing the Will dated 27th September, 2005 of Shakuntala Verma.

3. CS(OS) No.294/2016 has been filed by Gautam Verma, one of the heirs of Ramesh Verma, against Kailash Chander Verma, for declaration that Gautam Verma has an undivided 1/3rd share in the property and for declaration that the document dated 27th September, 2005 is not the Will of Shakuntala Verma.

4. I have enquired from the counsel for legal heirs of Ramesh Verma, as to how Gautam Verma, being only one of the heirs of Ramesh Verma, can seek a declaration of being 1/3rd owner of the property and whether not the 1/3rd share, even if of Ramesh Verma in the event of mother having died intestate, would belong equally to all the legal heirs of Ramesh Verma.

5. The counsel for the legal heirs of Ramesh Verma agrees.

6. CS(OS) No.294/2016, without impleading the other two heirs of Ramesh Verma, namely his widow Kamlesh Verma and his daughter Swati Verma, is in any case misconceived.

7. Even otherwise, the institution of CS(OS) No.294/2016 is inexplicable. The shares of the parties were already for adjudication in CS(OS) No.2419/2012 and in which, being a suit for partition, the status of all the parties is the same. CS(OS) No.294/2016 has obviously been filed only to add to the litigation and without there being any need therefor and is liable to be dismissed, without affecting the right of Gautam Verma in CS(OS) No.2419/2012.

8. On enquiry, it is informed that no original document has been filed in CS(OS) No.294/2016.

9. There is thus no need for tagging the file of CS(OS) No.294/2016 with CS(OS) No.2419/2012.

10. CS(OS) No.294/2016 is disposed of.

11. As far as CS(OS) No.2419/2012 is concerned, a perusal of the issues framed in the said suit on 10th August, 2016 shows an issue to have also been framed with respect to the Will dated 14th June, 1977 of Rajeshwar Verma (wrongly recorded in that order as Rameshwar Verma) when all counsels agree that there is no dispute of the said Will.

12. Accordingly, Issue No.3 in CS(OS) No.2419/2012 is ordered to be deleted.

13. Though the only issue for adjudication in CS(OS) No.2419/2012 is qua the document dated 27th September, 2005 claimed by Kailash Chander Verma to be a validly executed Will of Shakuntala Verma but plaintiff therein has completed her evidence, when there was no need to lead evidence, the onus of proving the issue qua the document dated 27th September, 2005 being on Kailash Chander Verma.

14. Be that as it may, Kailash Chander Verma to now file affidavits by way of examination-in-chief on or before 20th December, 2018.

15. If more than one witnesses to the document dated 27th September, 2005 is sought to be examined, affidavits of all the witnesses be filed together and all the witnesses to be tendered together for cross-examination.

16. In view of the aforesaid, IA No.12844/2018 in CS(OS) No.2419/2012 for consolidation of the two suits is disposed of.

17. List before the Joint Registrar on 7th January, 2019, as already scheduled, for recording of the evidence of the witnesses of the defendant No.1 Kailash Chander Verma.

RAJIV SAHAI ENDLAW, J.

DECEMBER 03, 2018

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