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

+ CS(OS) 362/2017

SNEH LATA SETHI

..... Plaintiff

Through: Mr. Bhagat Singh and Ms. Sweta
Kakkad, Advs.

Versus

RAJ KUMAR SABHARWAL & ANR

..... Defendants

Through: Ms. Nanda Devi Deka, Ms. Neha
Singh and Mr. Sanad Kumar Jha, Advs. for D-1.
Mr. Mayank Bamniyal, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.03.2018**

IA No.2942/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

Review Petition No.95/2018

3. The counsel for the plaintiff states, that on 9th January, 2018, he had erroneously consented to IA No.15046/2017 filed by Hemanshu Rajkumar Sabharwal for substitution in place of the defendant No.1 Raj Kumar Sabharwal. It is stated that the deceased defendant No.1 Raj Kumar Sabharwal, besides leaving the said Hemanshu Rajkumar Sabharwal as his son, has also left a widow Ms. Vanita Rajkumar Sabharwal and two daughters namely Payal Prince Makhija and Aanchal Akhilesh Kalwani. It is further stated that Hemanshu Rajkumar Sabharwal had also sought CS(OS) 362/2017

substitution as attorney of all the legal heirs. Thus, it is stated that all the legal heirs of the deceased defendant No.1 Raj Kumar Sabharwal, instead of only Hemanshu Rajkumar Sabharwal, be substituted in his place.

4. The counsel for Hemanshu Rajkumar Sabharwal has no objection.

5. In view of the aforesaid, this review petition is infructuous and is disposed of.

CS(OS) 362/2017

6. The deceased defendant No.1 be substituted by all his natural heirs aforesaid and an amended Memorandum of Parties be filed by the counsel for the plaintiff within one week.

7. The counsel appearing for Hemanshu Rajkumar Sabharwal, on enquiry states that she has authority from all the heirs of deceased defendant No.1 Raj Kumar Sabharwal and enters appearance on their behalf.

8. The counsel for defendant No.2 also interestingly states that he has wrongly made a statement on 9th January, 2018 that the defendant No.2 is not controverting the Will set up by the defendant No.1. It is stated that in the written statement which has been filed and which was not on record on 9th January, 2018, the defendant No.2 has controverted the Will set up by the defendant No.1.

9. I have enquired from the counsel for the defendant No.2, who had drafted the written statement.

10. The counsel for the defendant No.2 states he himself had drafted the written statement.

11. If that be so, it is not understandable as to how the counsel inspite of having drafted the written statement controverting the Will remained under

the impression that the defendant No.2 is admitting the Will when that is the only question for adjudication in this suit.

12. It would become difficult for the Courts to function when the counsels on one date appears without reading his / her files and thereafter starts seeking corrections of the orders passed on the basis of their statements stating that he / she was not prepared on the earlier date when he / she made statements.

13. The counsel for the defendant No.1, in response to the query made and recorded in the order dated 9th January, 2018, states that the defendant No.1 wants to proceed with the probate proceedings in Mumbai which is the previously instituted proceeding and does not want to prove the Will in this suit.

14. The counsel for the plaintiff states that the plaintiff has no notice of any probate proceedings in Mumbai.

15. The counsel for the defendant No.1 though states that notice of the probate case was issued by the Bombay High Court but is clueless of the date for which notice has been issued.

16. As noticed in the order dated 9th January, 2018 also, the only question to be decided in this suit for partition also is about the validity of the Will, probate of which is pending in the Bombay High Court. I have thus enquired from the counsel for the plaintiff, what purpose pursuing the present suit will serve.

17. The counsel for the plaintiff states that till he receives notice of the probate proceedings, the suit be not disposed of. He also states that he will approach the Supreme Court for transfer of the probate proceedings to this Court.

18. I find that vide *ex-parte* order dated 10th August, 2017, the parties were directed to maintain *status-quo* qua immoveable properties of the deceased.

19. On enquiry, it is stated that there is no such interim order in the probate proceedings.

20. It is not deemed appropriate to keep this suit pending. The suit is disposed of with liberty to all the parties to sue again for partition as and when the dispute as to the document claimed to be the Will set up by defendant no.1 is decided and with further directions as under:

(I) The counsel for the defendant No.1 to, on or before 15th March, 2018, under acknowledgement in writing of the counsel for the plaintiff and the counsel for the defendant No.2, inform the said counsels of the next date of hearing in the probate proceedings and furnish them with complete paper book of the probate proceedings;

(II) Until an appropriate interim order is passed with respect to the estate of Smt. Krishna Rani Sabharwal, mother of the plaintiff and the two defendants, in the probate proceedings, the parties to maintain *status-quo* as to title and possession of the properties subject matter of this suit.

The parties are left to bear their own costs.

21. The counsel for the legal heirs of the deceased defendant No.1 at this stage states that the defendant No.1 has preferred an appeal against the order dated 9th January, 2018 in this suit insofar as allowing IA No.9040/2017 of the plaintiff under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) and also disposing of IA No.11498/2017 of defendant No.1 under Order XXXIX Rule 4 of CPC and in which appeal, notice has been issued yesterday. It is stated that if the suit is disposed of, the appeal would become infructuous. However, the counsel for the legal heir of the deceased defendant No.1 is again clueless as to the grounds on which appeal is preferred.

22. The counsel for legal heirs of deceased defendant No.1 now states that the ground is of suppression of the Will by the plaintiff.

23. Once, it is not in dispute that the properties, for partition of which this suit has been filed, are the properties of the deceased mother of the parties and the Will which the plaintiff is blamed of suppressing is subject matter of probate before the Bombay High Court, the question of the legal heirs of the deceased defendant No.1 being entitled to deal with the properties to the exclusion of the other heirs does not arise.

24. There is thus no merit in the aforesaid contention.

RAJIV SAHAI ENDLAW, J.

MARCH 01, 2018

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