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

+ CS(OS) 454/2016

DIVJOT SINGH

..... Plaintiff

Through: Mr. Sarfaraz Khan and Mr. Mirza
Amir Baig, Advs.

Versus

RABINDER KAUR WAHI AND ORS

..... Defendants

Through: Ms. Arundhati Dhar, Adv. for D-1to4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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05.02.2019

IA No.1652/2019 (for exemption)

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

**CS(OS) 454/2016 & IAs No.6752/2017 & 6753/2017 (both u/S 151 CPC),
1651/2019 (of D-1 u/S 151 CPC)**

3. The plaintiff has instituted this suit for partition, permanent injunction and rendition of accounts, pleading (i) that the reliefs sought are being sought in terms of the Will dated 13th August, 2016 of his father late Harbans Singh Wahi; (ii) that the marriage of the father of the plaintiff with the mother of the plaintiff was dissolved by a decree of divorce dated 7th September, 1989; (iii) that Harbans Singh Wahi, father of the plaintiff died on 22nd August, 2016; (iv) that the father of the plaintiff, after divorce with the mother of the plaintiff had got married with defendant No.1 Rabinder Kaur Wahi and of

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which marriage, the defendants No.2&3 namely Ikjot Singh Wahi and Jaspeet Kaur Wahi were borne; (v) that the defendant No.4 Gurbani Kaur Wahi is the daughter of the defendant No.1 from an earlier marriage; (vi) that Harbans Singh Wahi has left the estate comprising of:

- (a) Ancestral House No.G-7, Ground Floor, Lajpat Nagar, Part-III, New Delhi-24.
- (b) Plot CC-133, Sector-A, Greenfield Colony, Faridabad measuring 285 square yards.
- (c) Plot CC-49, New A IV 2848, Greenfield Colony, Faridabad measuring 285 square yards.
- (d) NRO Account bearing No.91510017069931 with Axis Bank.
- (e) Locker with Axis Bank.
- (f) NRO Account bearing No.02503000029009 with Punjab & Sind Bank.
- (g) Locker with Punjab & Sind Bank.
- (h) NRE Account bearing No.04842000121544 with Punjab & Sind Bank.
- (i) Locker with Punjab & Sind Bank.
- (j) 2 Lockers with Canara Bank; and,

(vii) that in terms of the Will dated 13th August, 2016, House No.G-7, Ground Floor, Lajpat Nagar, Part-III, New Delhi is bequeathed to the plaintiff exclusively and the moveable properties are bequeathed as provided in the Will.

4. The suit was entertained and summons thereof ordered to be issued and vide *ex-parte* ad-interim order dated 8th September, 2016 *status-quo* CS(OS) 454/2016

with respect to the immoveable property and the monies in account of Harbans Singh Wahi with Axis Bank and Punjab & Sind Bank and with respect to the operation of the Lockers of Harbans Singh Wahi with the said Banks and Canara Bank ordered.

5. The defendants No.1 to 4 have filed a written statement admitting the Will dated 13th August, 2016 of Harbans Singh Wahi.

6. Notwithstanding the aforesaid position, the suit is pending and applications are being filed for release of monies in the bank accounts of Harbans Singh Wahi for the purposes for which they were bequeathed. Today also IA No.1651/2019 of the defendant No.1 seeking release of monies is listed.

7. I have enquired from the counsel for the plaintiff and the counsel for the defendants No.1 to 4 that since there is no dispute between the parties as to the Will, why is the present suit pending. Rather, it appears that the suit should not have been entertained, once the plaintiff was claiming rights under a Will, even if the said Will were to be disputed by the other heirs of the deceased. However this misconceived proceeding has consumed the time of this Court for the last over two years.

8. The counsel for the plaintiff states that the dispute between the parties is with respect to the amount of monies which the defendants No.2&3 are entitled to for the purposes of their education in terms of the Will of the deceased.

9. Even if that be so, for the said relief, the appointment of an administrator was to be sought and the claim for partition is misconceived.

10. A perusal of the Will dated 13th August, 2016 shows the same to be with respect to immoveable properties situated in India as well as outside India as well as with respect to monies in bank accounts of the deceased in India as well as outside India. As far as the immoveable properties and monies in bank accounts outside India are concerned, there is no need for any partition, since the entire monies in foreign bank accounts are bequeathed in favour of different parties. Even otherwise, this Court would not have territorial jurisdiction to partition the same. As far as the monies in bank accounts in India are concerned, the same have been bequeathed first towards the education of defendants No.2&3 upto Masters Level and the remaining equally to the plaintiff and defendants No.1 to 3, after donating Rs.5 lakhs to a charity.

11. On enquiry, it is informed that the money in the Indian Bank Accounts, at the time of demise of Harbans Singh Wahi was approximately Rs.2 crores and after the release allowed vide orders in this suit from time to time, now about Rs.1.20 crore remains.

12. The proper legal proceeding to be instituted by the plaintiff was a proceeding for appointment of an administrator invoking the testamentary jurisdiction of this Court and not this suit. Even if this Court, ignoring the technicalities, were to appoint an administrator in this suit for administering the estate of the deceased, the parties will have to bear the expenses of such administrator and would be subjecting themselves to the decision of the said administrator and the scope of challenge thereto in this Court would be limited.

13. Considering that only about Rs.1.20 crore is remaining, it is deemed appropriate to give an opportunity to the parties to, if want to avoid further litigation and incurring of expenses of the administrator, arrive at a settlement. Else, this Court will have no option but to dismiss the suit as not maintainable, leaving the parties to litigate further in testamentary jurisdiction.

14. List on 22nd February, 2019.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 05, 2019

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