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

+ CS(OS) 18/2020

GURCHARAN SINGH

..... Plaintiff

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Satinder Singh Bawa, Adv.

Versus

BHUPINDER SINGH & ORS.

..... Defendants

Through: Mr. Raman Kapoor, Sr. Adv. with
Mr. Sunil Dalal and Ms. Surbhi
Mehta, Advs. for D-2 to 6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.01.2020

Caveat No.45/2020

1. The senior counsel for the caveators/defendants appears.
2. The caveat stands discharged.

IA No.822/2020 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

CS(OS) 18/2020 & IA No.821/2020 (u/O XXXIX R-1&2 CPC)

5. The plaintiff has sued for partition of property No.D-24, Bhagwan Dass Nagar, East Punjabi Bagh, New Delhi and for restraining the defendants from dealing with the property.
6. A reading of the plaint shows (a) that the determination of shares of the parties in the property is dependent upon a document claimed by the plaintiff and some of the defendants to be the Will of the common

predecessor of plaintiff and defendants and disputed by some of the other defendants; and, (b) that the plaintiff has already instituted proceedings for seeking Letters of Administration with copy of the said document annexed as the validly executed Will and which proceedings are pending and in which some of the defendants have filed objections.

7. I have enquired from the senior counsel for the plaintiff the need for this suit for partition inasmuch as no finding of shares therein can be given without determination of shares and determination whereof is dependent as aforesaid on the proof of the document as the Will and which exercise, being subject matter of previously instituted Letters of Administration proceedings, cannot be undertaken here.

8. The senior counsel for the plaintiff has contended that the defendants who are objecting to the document as Will, on earlier occasion admitted the said document to be the Will and also executed certain documents.

9. Even if that be so, the said plea is to be taken in response to the objections filed by them in the Letters of Administration proceeding, to have the objections disposed of summarily, if permissible in law and merely for that reason this suit entailing the same issue as to the validity of the document as the Will, ought not to be entertained and take up the time of this Court.

10. The senior counsel for the plaintiff states that even after adjudication of the Letters of Administration proceeding, the right to partition would still remain.

11. Undoubtedly so; but in that case the suit for partition can be disposed of expeditiously on the basis of findings in the earlier instituted proceedings.

12. Lastly it is contended that interim reliefs with respect to the property are sought.

13. The same can also be applied for under Sections 247, 266 and 269 of the Indian Succession Act, 1925.

14. The senior counsel for the plaintiff, under instructions, states that the plaintiff withdraws the present suit with liberty to file again, as and when the need arises and with liberty to apply for all interim reliefs to which the plaintiff may be entitled, in the Letters of Administration proceedings.

15. The suit is dismissed as withdrawn with liberty aforesaid.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 21, 2020

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