
(2009) 05 AHC CK 0615
In the Allahabad High Court

Mohit Kumar

APPELLANT

Vs

Mrs. Lilu Kumar and Others

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0615

Hon'ble Judges : Vedpal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vedpal, J.

C.M. Application No. 43505 of 2008& Objections

1. C.M.Application No. 43505 of 2008 by petitioner Shri Mohit Kumar u/s 151 of the CPC in Testamentary Case No. 1 of 2004 was filed on 12-05 -2008 for extension of time for filing application for amendment of the petition in pursuance of the order dated 27.3. 2008, passed by Hon''ble the Supreme Court , on the ground that he has moved application for permission to implead four persons as respondents, therefore in the interest of justice time be granted for filing amendment application until application to implead four person is decided.

2. The objections of respondent No. 3 against this application are that the application of petitioner is against the order passed by the Hon''ble Apex Court with the consent of the parties in Civil Appeal No. 2159 of 2008 arising out of SLP (C) No. 463 of 2007 (Himalayan Institute Hospital Trust and Anr. v. Mohit Kumar and Ors.).That the application under reply is a device to prolong the proceedings and is misconceived , which is liable to be rejected.

C.M. Application No. 43506 of 2008 & Objections

3. C.M.Application No. 43506 of 2008 was also filed in Testamentary Case No. 1 of 2004 by petitioner Mohit Kumar u/s 151 of the CPC to implead four persons

out of five mentioned therein , namely, Ms. V. Rajesaramma; Mr. Anil Singhal; Mr. Mariam Pillai Ganesan and Ms. Meera Swami Mohan as respondents, in the petition for grant of letters of administration, on the grounds that petition for grant of letters of administration to the estate of the deceased, Sri Swami Rama alias Brij Kishor Kumar has been filed by his son, Mohit Kumar the present applicant, as Sri Swami Rama died intestate and his entire estate devolved upon his legal heirs, and the petitioner. That the petitioner is also one of the duly nominated presidential body member of Himalayan Institute Hospital Trust. That a rival claim has been set up by one Dato Mohan Swami who claims adversely to the present petitioner by way of a document alleged to be the WILL of Sri Swami Rama and apart from the said Dato Mohan Swami, there are five other persons who also claim adversely to the present petitioner by way of the alleged Will of Sri Swami Rama while Sri Swami Rama alias Brij Kishor Kumar had never executed any Will. That out of the said five persons named in the application, three are foreign citizens while one Ms. Meera Swami Mohan to whom Dato Mohan Swami claims his wife is permanently residing in the U.K. and/ or Malaysia. That even though they have no interest in the property, but to avoid any future litigation between the said persons and the petitioner it is necessary to implead only first four of them as party to the petition as there is no need for impleadment of Mr. Vijay Dhasmana whose name finds place at S. No 5 in the present application as he has no locus standi and he can be heard before this Court by virtue of the orders passed by the Hon'ble Appellate Court, in Special Appeals Nos. 690 and 691 of 2006.

4. The objections on behalf of the respondents No. 3 to the petitioner's application in brief are that the Hon'ble Apex Court in Civil Appeal No. 2159 of 2008 arising out of SLP (C) No. 463 of 2007 (Himalayan Institute Hospital Trust and Anr. v. Mohit Kumar and others) by its order dated 27.3. 2008 in paragraph 5 (vi) had specifically provided that who are to be impleaded as respondent No. 4 and 5 in the above testamentary case and the said order was passed with the consent of the parties and the said order is already on record, whose paragraph 5 (vi) is as under:

(vi). In place of Himalayan Instituted Hospital Trust through its presidential body members" impleaded as a party, the following two groups shall be impleaded as respondent Nos. 4 and 5 in Testamentary Case No. 1 of 2004:

- (a) Dato Mohan Swami
- (b) Vijender Chauhan
- (c) Vijay Dhasmana
- (d) Vikram Singh

Claiming to constitute the presidential body members of Himalayan Institute Hospital Trust, Jolly Grant Dehradun.

- (a) Mohit Kumar,

(b) Lilu Kumar

(c) Gen. M.L. Dar (Retd.)

Claiming to constitute the presidential body members of Himalayan Institute Hospital Trust, Jolly Grant, Deharadun.

5. That after the order of the Hon''ble Apex Court no other person can be allowed to be impleaded in place of the respondent No. 4, & 5 and impleadment of any person other than the persons directed by the Hon''ble Apex Court in the said order dated 27.3.2008 would amount to review /modification of the order of the Hon''ble Apex Court which is neither permissible nor is proper and the application under reply is absolutely misconceived, irrelevant and uncalled for, and is liable to be rejected.

C.M. Application No. 71747 of 2008, Objections & Reminder

6. The petitioner Mohit Kumar then on 18-08-2008 moved C.M.Application No. 71747 of 2008 under Order VI Rule 17 read with Section 141 and 151 CPC for amendment of petition for the grant of letter of administration. This application has been moved on the ground that in term of the order dated 27.3.2008 passed by the Hon''ble Supreme Court in Civil Appeal No. 2159 of 2008, the petition for grant of letter of administration is liable to be amended as the Hon''ble Supreme Court has passed an order to this effect that respondent No. 4 which is a society, namely, Himalayan Institute Hospital Trust has to be substituted and arrayed in the manner indicated in the order itself as follows:

4. 4(a) Dato Mohan Swami,

4(b) Vijender Chauhan,

4(C) Vijay Dhsmana,

4(d) Vikram Singh

Claiming to constitute the presidential body members of Himalayan Institute Hospital Trust, Jolly Grant Dehradun.

55(a) Mohit Kumar

5(b) Lilu Kumar

5(C) Gen. M.L. Dar (Retd.)

Claiming to constitute the presidential body members of Himalayan Institute Hospital Trust, Jolly Grant, Dehradun.

7. That in view of the above circumstances, paragraph 6 of the petition for grant of letter of administration is also liable to be amended. The petitioner has also proposed that by way of amendment old para 6 of the petition be replaced by the following new para 6.

6. That, in the alleged WILL, the alleged beneficiary is a society, Himalayan Institute Hospital Trust. The presidential body of the society, i.e. Himalayan Institute Hospital Trust consists of Mohit Kumar, the present applicant; Lt. Gen. M.L. Dar (Ret'd) and Mrs. Lilu Kumar nominated by Sri Swami Rama vide nomination letter dated November 10th 1996 executed by him. The opposite party No. 3 claims to be the presidential body member of the society, Himalayan Institute Hospital Trust along with Sri. Vijendra Chauhan, Sri. Vijay Dhasmana and Sri. Vikram Singh on a forged, fabricated and void ab initio nomination.

8. The petitioner, in view of the above, has prayed that the proposed amendment be allowed in the petition for grant of letter of administration.

9. The opposite party No. 3 filed his objection which is C.M. Application No. 97169/2008. The preliminary objection raised by opposite party No. 3 is that the application for amendment of petition, has not been verified as required under Order VI Rule 15 C.P.C. and the application for impleadment of a party, is required to be moved under Order I Rule 10 C.P.C. and not under Order VI Rule 17 or u/s 141 or u/s 151 C.P.C. and that the proposed amendment is not in term of the order dated 27.3.2008 passed by the Hon'ble Apex Court. The other objections raised by O.P. No. 3 are that the order dated 27-03-2008 which was passed by the Hon'ble Supreme Court, with the consent of the parties, is final and binding on the parties as well as on this Court and as such the petitioner is simply required to comply with the order dated 27.3.2008 passed by the Hon'ble Supreme Court without making any additions/ amendments in the pleadings. That in a testamentary case, u/s 278 of the Indian Succession Act, the jurisdiction of the testamentary court is limited as he has no jurisdiction to adjudicate or decide the rights of the parties and title to the properties while by way of the proposed amendment by incorporating Para 6 to the main petition, the petitioner wants to widen the scope of the petition u/s 278 of the Indian Succession Act, to decide the title to the properties which is not permissible under law. That the application for the amendment of the petition is not a bonafide and no sufficient cause has been shown by the petitioner for not having raised the said pleadings in the petition for letters of administration which is pending since 2002 and the amendment sought is not necessary for the determination of the real controversy between the parties.

10. The petitioner filed his rejoinder (C.M. Application No. 98109/ 2008) stating that the objections filed by the respondent No. 3 to the application of the petitioner under Order 6 Rule 17 of the CPC are frivolous and have no merits and the same are not legally maintainable. That the scheme of Order 6 of the Code of Civil Procedure, nowhere mandates verification of miscellaneous applications. In any case, the application for amendment filed by the petitioner is duly supported by the affidavit of the petitioner. That the orders passed by the Hon'ble D.B. of this Court in the Special Appeals 690/2006 and 691/2006 stand merged with the order of the Hon'ble Supreme Court dated 27.3.2008 and the objections filed by

the Respondent No. 3 are against the final order in the subject matter. That filing objections by the respondent No. 3 against the orders of the Hon''ble Supreme Court, is against the law. That the application of the petitioner for amendment is inconsonance with the orders of the Hon''ble Supreme Court. It was further submitted that once the Hon''ble Supreme Court orders impleadment, it has to be by way of amendment of the pleadings. That it is settled law that once the Hon''ble Court allows impleadment of persons in the case, the consequential amendments have to be incorporated accordingly otherwise the whole concept of pleadings will be frustrated. That the amendments sought by the petitioner are necessitated by the circumstances and they do not change the nature of the case and do not introduce new facts but only explain the existing facts by providing better particulars. That application of the petitioner for amendment is in consonance with the provisions of the Indian Succession Act, 1925 and the objections filed by the respondent No. 3 are against the scheme of the Indian Succession Act, 1925 That the Hon''ble D.B./Supreme Court have already laid down the scope of the proceedings, hence the same is a matter of record and needs no further reply by the petitioner. and as such the objections filed by the respondent No. 3 are liable to be dismissed and the application for amendment moved vide CMA. No. 71747 of 2008, is liable to be allowed.

Application C.M. No. 109052 of 2008 & Objections

11. Application C.M. No. 109052 of 2008 in Testamentary Case No. 1 of 2004 was moved by respondent No. 3 Dr. Dato Mohan Swami under Order VI Rule 16 of the CPC for striking out para ""6" of the petition for letters of administration on the grounds that the provisions of Section 278 of the Indian Succession Act, 1925 requires that an application be made in the prescribed format stating the specific queries as per the provisions of sub Clause (1)(a) to (f) and (2) of Section 278 and thus the scheme of Law u/s 278 of the Act allows the above particulars and limits the scope of adjudication for the grant of the letters of administration sought under such petition. The necessary pleadings are thus enumerated under the specific provisions and any further pleadings other than those permitted and required by the above section, in such application, shall be unnecessary and outside the ambit and scope of Section 278 of the Indian Succession Act, 1925, because the Testamentary Court under the testamentary jurisdiction does not decide the Civil disputes with respect to the rights & title as claimed by the petitioner and the same can only be decided by a regular civil Court in a proper suit and a separate original suit being suit No. 865 of 1997 has also been filed by the petitioner along with two other persons claiming themselves to be the members of presidential body of the society Himalayan Institute Hospital Trust and the said suit is also before this Court to be heard and decided simultaneously but separately as per order of the Hon''ble Supreme Court .That in Para 6 of the petition, the petitioner has made averments with respect to the alleged claims. regarding the Society affairs admitting at the same time that the said issues are the subject matter of an independent suit No. 865/97, which is an apparent attempt to widen the scope of the subject of

petition u/s 278 of the Act. Thus the said pleadings are not only frivolous and vexatious but unnecessary for the purpose of the present petition having no relevance with respect to either the relief sought or to be granted in the present petition. That the sole purpose of the pleading contained under Para 6 of the petition is to prejudice, embarrass and delay the trial of the matter and is an apparent abuse of the process of law . That the provisions of Order VI Rule 16 C.P.C. provides that such vexatious, frivolous and unnecessary pleadings be struck out at any stage of the proceedings so that no opportunity is taken by the party to prejudice, embarrass or delay the fair trial of the matter. In view of the above prayer has been made to strike out paragraph No. 6 of the petition.

12. The petitioner Shri Mohit Kumar filed his objections(CMA No. 14937 of 2009) on 9.2.2009 against application filed by Respondent No. 3 under O.6 R.16 of C.P.C. on the grounds that application has been filed against the orders passed by the Hon''ble D.B./Supreme Court dated 5.12.2006/27.3.2008 arising from the present proceedings. That the Ho''ble Supreme Court while passing the order dated 27.3.2008 and the Hon''ble D.B. While allowing the special appeals Nos. 690 and 691/2006, vide order dated 5.12.2006 which merged with the order of the Hon''ble Supreme Court dated 27.3.2008 passed in civil appeal No. 2159/2008, have considered the factual background of the entire controversy and have finally come to the conclusion that the society, Himalayan Institute Hospital Trust is a necessary party to the present dispute, and as such the averments regarding the party/dispute have to be found in the pleadings otherwise there can be no effective disposal of the controversy. That the averments and submissions as stated in the Para No. 3 of the application for deletion of pleadings are frivolous and this Court has full jurisdiction to decide the entire controversy as per the entire scheme of the Indian Succession Act, 1925 and specially the provisions of the Section 266 read with Section 300 of the Indian Succession Act, 1925 That the provisions of Section 278 of the Indian Succession Act, 1925 do not prohibit any further pleadings. That the application under consideration is malafide and an abuse of process of law That there is no legal impediment/ embargo or legal bar against a party to raise voluntary pleadings apart from the mandatory pleadings as enumerated u/s 278 of the Indian Succession Act, 1925. That it is wrong to say that the averments of Para No. 6 of the main petition for grant of letters of administration are frivolous, vexatious and unnecessary. It was further stated that the contents/averments of the Para No. 6 of the main petition for grant of letters of administration must remain on the record to decide the controversy and also to give effect to the orders of the Hon''ble D.B./Supreme Court in the present matter. That in view of the liberty granted by the Hon''ble Supreme Court vide order dated 27.3.2008, passed in Civil Appeal No. 2159/2008, to the parties to move an application for reading evidence led in the present matter to be read in the O.S. No. 865/1997 or vice versa, the present application under consideration for deletion of pleadings is infructuous and in the circumstances the application moved by respondent No. 3 should be dismissed with heavy costs .

C.M. Application No. 6216 of 2009 & Objections

13. C.M. Application No. 6216 /2009 has been moved by petitioner Shri Mohit Kumar u/s 151 C.P.C, praying that the evidence in the T.C. No. 1/2004& T.C. No. 3/2003 be read as evidence in the original suit bearing O.S. No. 865/1997 and vice versa on the grounds that dispute in testamentary cases and original suit are common in regard to the presidential body membership of the Society Himalayan Institute Hospital Trust and with the consent of the parties liberty was granted by the Hon''ble Supreme Court vide order dated 27.3.2008 passed in the Civil Appeal No. 21159 /2008, to the effect that if any party wants the evidence led in the Testamentary Cases, to be read as evidence in the original suit or vice versa , appropriate application may be made before the High Court for that purpose. In view of these circumstances it was prayed that an order be passed to the effect that the evidence in the Testamentary Cases shall be read as evidence in the O.S. No. 865/1997 and vice versa.

14. C.M. Application No. 14941 of 2009 are the objections of the respondent No. 3 against the petitioner's Application. The objections in brief are that the Testamentary Case for grant of the letters of Administration u/s 278 or for the grant of Probate of the Will u/s 276 of the Indian Succession Act, 1925 are of summary nature wherein the scope of adjudication is limited to the extent of such grant as envisaged u/s 289 and 290 of the Act. That the final outcome of the subjects of petitions are decisive whether they shall be refused/rejected or the grant shall be made in the manner and form set forth in the Schedule VI and VII of the Indian Succession Act, 1925. That under the provisions of Order XVIII Rule 2 C.P.C. the parties are required to adduce evidence against the issues framed in the matter either to prove or rebut the same, however, the limits and extent of the evidence led in the matter by either party are restricted to the relevancy of the same in relation to the issues framed in the matter and no evidence which is irrelevant or out of the context of the issues can be allowed to be led or read by the Court in deciding the issues of the matter. The cause for filing this application can only arise when the evidences are led in the matter, and with respect to the particular evidence led in one case, which is sought to be read in evidence in the other case and that too subject to the satisfaction of the Court having regard to its relevancy and requirement with respect to the issues to be disposed of in the case. That apart from it, the present application being vague, ambiguous and premature, cannot be considered at this stage and is liable to be dismissed.

15. I have heard Sri Mohit Kumar, petitioner in person and Sri N. K. Seth Senior Advocate assisted by Sri Sanjeev Agrawal Advocate for O.P. No. 3 at length and perused the applications moved by the parties one after another and their objections. I have also perused case laws cited by both the parties.

16. All the above stated applications have been moved in the Testamentary Case No. 1 of 2004 Mohit Kumar v. Lilu Kumar and Ors. and are connected with each other, therefore, they are being disposed of by this common order.

17 C.M .Application No. 43505 of 2008 was moved by petitioner Shri Mohit Kumar along with C.M. An. No. 43506 of 2008 for seeking time to move impleadment application in compliance of the order dated 27.3. 2008, passed by Hon"ble the Supreme Court till C.M. An. No. 43506 of 2008 is decided.. It reveals that C.M.Application No. 71747 of 2008 for impleadment of opposite parties Nos. 4 and 5 in place of Himalayan Institute Hospital Trust with consequential amendment was moved by the petitioner on 18.8.2008. Thus, this application seeking time for filing amendment application till the decision of the C.M. An. No. .43506of 2008, becomes infructuous and was rightly not pressed by the petitioner during his argument. It is therefore, liable to be rejected as infructuous.

18. Sri Mohit Kumar reiterating his stand taken in applications (C.M. An. No. 43506 of 2008, C.M. An. No. 71747 of 2008 , C.M. An. No. 6216 of 2009) , rejoinder (C.M. An. No. 98109 of 2008) and objection C.M. An. No. 14937 of 2009) has argued at length.. The submissions made by Sri Mohit Kumar, in brief, are that he is the son of deceased Swami Rama, who died intestate and his entire estate devolved upon his legal heirs and he himself is duly nominated presidential body member of Himalayan Institute Hospital Trust. He further submitted that besides Dato Mohan Swami, five other persons, namely, Ms. R. Rajeswaramma, Sri Anil Singhal, Sri Mariam Pillai Ganesar, Ms. Meera Swami Mohan and Sri Vijay Dhasmana alias Vijay Kumaar Dhasmana are also claiming adversely against him though they have no right or title in the property or in the Society but to avoid future complications, it is necessary to implead them as party. It was also submitted that Section 295 of The Indian Succession Act 1925 and Rule 39 of Chapter XXX of the Allahabad High Court Rules, 1952, provide that if the petition for probate or letters of administration become contentious the petition shall be treated as suit and procedure provided for suit in the C.P.C shall be applicable.. He reiterated his stand as has been taken in Application No. 43506 of 2008 in regard to the impleadment of other persons in Testamentary Case No. 1 of 2004. It was further submitted that objections raised by opposite party No. 3 Sri Dato Mohan Swami in this regard are not tenable. In regard to C.M. Application No. 71747 of 2008 his contentions , in brief, are that the proposed amendment in the petition for grant of letter of administration is in consonance with the order passed by the Hon"ble Supreme Court on 27.3. 2008 in C.A. No. 2159 of 2008 arising out of S.L.P.(C) 463 of 2007 Himalayan Institute Hospital Trust and Ors. v. Mohit Kumar and Ors. He further submitted that amendment in para 6 is consequential to the said amendment and as such it should be allowed and the objections raised by opposite party against his application are wrong, untenable and misleading and are liable to be rejected. In regard to C.M. Application. No. 109052 of 2008 his submissions , in brief , are that it has been moved by opposite party No. 3 Dato Mohan Swami just to mount a pressure and it has no merit. According to Sri Mohit Kumar his Application No. 6216 of 2009 is also in consonance with the order dated 27.3. 2008 passed by Hon"ble Supreme Court in Civil Appeal No. 2159 of 2008 (arising out of S.L.P

(C) No. 463 of 2007) by which liberty was granted to the parties to move such an application and the objections of opposite party No. 3 against this application have no force and are misleading and are liable to be ignored. Sri Mohit Kumar in support of his contentions relied on Kalyanchand Lalchand and Ors. v. Appellants V. Sitabai com Dhanasa akhmichand : Indian Law Report 1913 Kalarikkal Thressiamma and Another Vs. Kallidukkananikkal Joseph and Others, ; Jayprakash Salunke and others Vs. The State of Maharashtra and others, ; Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, ; Jayamma Vs. Maria Bai Dead by Proposed Lrs. and Another, ; Nirmala Devi v. Arun Kumar Gupta and Ors. 2000 (3) CCC 180 (SC) ; Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others, ; Mohit Kumar and Ors. v. Dato Mohand Swami and Ors. T.P. (C) No. 4-45/2004

19. The learned Counsel for O.P. No. 3 reiterating his stand taken in his objections Dated 15.05.2008 , Objections(C.M.An.No97169 of 2008) and Objections (C.M. Application No. 14941 of 2009) has also argued at length. The brief of the submissions made by the learned Counsel for O.P. No. 3 is that impleadment of four person other than the persons directed to be impleaded by the Hon"ble Apex Court vide order dated 27.3.2008 would amount to review / modification of the order of the Hon"ble Apex Court which is neither permissible nor possible. That the scope of Section 278 of the Indian Succession Act is limited and question of rights and title of the property left by deceased can not be gone into these proceedings and regular suit, for that purpose, for declaration and injunction has already been filed by the petitioner himself and as such the application of the petitioner for impleadment is mala fide .It was further submitted that on a bare perusal of the order Dated 27-03-2008 passed by the Hon"ble Supreme Court, it is apparent that the Hon"ble Supreme Court have finally decided that Himalayan Institute Hospital Trust as impleaded by the petitioner in the array of parties would no more be a party to the proceedings and in its place the respondent No. 4 and 5 as framed by the Hon"ble Supreme Court in paragraph 5(vi) of the said judgment and order dated 27.3.2008 would be substituted. The question of the required parties in the present matter has therefore been decided in final terMs. with the consent of the parties. It was also submitted that in order to further delay, confuse and complicate the matter, the petitioner has moved an application C.M. Application 6216 of 2009 on 20.1.2009 u/s 151 C.P.C., before recording of the evidence, for considering the evidence in testamentary cases as evidence in the original suit No. 865 of 1997 or vice versa. Had it been done before recording of the evidence in all cases the Hon"ble Supreme Court would have passed a blanket order directing that all the evidence led in testamentary cases would be considered in the original suit or vice versa but the Hon"ble Supreme Court knowing well that the scope of the two proceedings, i.e, testamentary cases and the original suit being separate and distinct, have not passed such blanket order and as such C.M. Application No. 6216 of 2009 is premature. In regard to C.M Application. No. 109052 of 2008 under Order VI Rule 16 of the CPC for striking out para 6 of the petition, it was

submitted that in Para 6 of the petition, the petitioner has made averments with respect to the alleged claims regarding the Society affairs admitting at the same time that the said issues are the subject matter of an independent suit No. 865/97. Thus the said pleadings are not only frivolous and vexatious but unnecessary and the sole purpose of the pleading contained under Para 6 of the petition is to prejudice, embarrass and delay the trial of the matter and is an apparent abuse of the process of law and as such it is necessary to strike out paragraph No. 6 of the petition. The learned Counsel for O.P. No. 3 in support of his contentions relied on *Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others*, ; *Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others*, ; *K.M. Varghese and Others Vs. K.M. Oommen and Others*, ; *Smt. Manorama Badu Mohapatra and Ors. v. Girish Ch. Naik and Anr.* AIR 1994 (Ori) 18 ; *Surendra Chandra Jena and Others Vs. Laxminarayan Jena and Others*, ; *Estate of Late Shri Gurcharan Dass Puri* AIR 1987 P&H 122 ; *M. Madhavan Nair Jayasree Vs. Manjeri Municipality and Another*, ; *B.L. Banerjee v. D.K. Ganguly* AIR 1984 Cal17 ; *Delhi Development Authority Vs. Mrs. Vijaya C. Gurshaney and Another*, *Mrs. Panzy Fernandas Vs. Mrs. M.F. Queoros and Others*, ; *Lal Singh Vs. Smt. Hira and Others*, ; *Mt. Hajira Khatoon v. Saiyad Mustafa Hausain* AIR 1941 Oudh 474.

20. I have carefully considered the respective submissions of the parties, keeping in view the facts and circumstances of all the three cases pending between them and the order dated 27.3.2008 passed by the Hon'ble Supreme Court in Civil Appeal No. 2159 of 2008 (arising out of SLP No. 463 of 2007) *Himalayan Institute Hospital Trust and Anr. v. Mohit Kumar and Ors.*

21. Before proceeding further for determination of the other applications and their objections, it is necessary to go into the background of the cases pending between the parties.

22. It reveals from the perusal of the record that on the basis of the Will dated 9.4.1996 allegedly executed by Shri Swami Ram who died on 13.11.1996, Shri Dato Mohan Swami had applied for probate of the said Will in the court of District Judge, Dehradun. The probate was granted in his favour on 16.7.1997. Thereafter Shri Mohit Kumar and others moved application before the court concerned for setting aside the said probate and also filed Original Suit No. 865 of 1997 on 23.12.1997. It further reveals that the order of grant of probate in favour of Dato Mohan Swami was set aside on 18.7.2002 by Additional District Judge, Dehradun. On the next date i.e. on 19.7.2002, Shri Mohit Kumar filed a petition for issuance of letters of administration, in the Delhi High Court which was registered as Testamentary Case No. 26/2002 (new number 1/2004). When the order of grant of probate in favour of Dato Mohan Swami was set aside by learned Additional District Judge on 18.7.2002, Dato Mohan Swami also filed petition for the probate in the High Court of Uttranchal on 24.7.2002 which was registered as Case No. 1/2002 (new number 3/2003).

23. It further reveals from the the record that Shri Mohit Kumar in Original Suit

No. 865 of 1997 had arrayed Himalayan Institute Hospital Trust as plaintiff No. 4 through him and two others namely Lilu Kumar and M.L.Dar, Lt. General (Retd.). On application under Order 1 Rule 10 (2) of the CPC , the court vide its order dated 8.4.2003 had directed the deletion of the name of the plaintiff No. 4 . Thereafter, the parties went up to the Hon''ble Supreme Court and the Hon''ble Supreme Court in SLP No. 2011/2004 upheld the order of the court and as such the name of the said society Himalayan Institute Hospital Trust was deleted from the array of the plaintiff of the original suit No. 865/1997.

24. It appears that thereafter in Testamentary Case No. 1/2004, an application was filed by the opposite parties seeking the deletion of the name of the society from the array of the parties on the same ground before this Court. The said application was allowed by Hon''ble Mr. Justice A.N. Verma Judge of this Court under order Dt. 08-09-2006 and the name of the society was directed to be deleted from the array of the parties in the Testamentary Case No. 1/2004. A review was also filed by Shri Mohit Kumar, petitioner against the said order but same was dismissed on 22-09-2006.

25. Thereafter, a Division Bench of this Court Vide order dated 05-12-2006 passed in Special Appeal No. 690/2006 & S.A No. 691/2006 filed by Shri Mohit Kumar, set aside the order dated 8.9.2006 by which the name of the society was ordered to be deleted from the array of the parties in T.C. No. 1/2004. Feeling aggrieved with the said judgment and order passed by the Division Bench, the opposite parties preferred SLP No. 463/2007 before the Hon''ble Supreme Court. The Hon''ble Supreme Court in Civil Appeal No. 2159/2008 (arising out of SLP No. 463 of 2007 Himayalan Institute Hospital Trust and Anr. v. Mohit Kumar and Ors.) decided the said matter with the consent of the parties under order dated 27-03-2008, which is reproduced below as it is of utmost importance for the decision of the controversy between the parties

ORDER

Leave granted. We have heard learned Counsel for the parties.

2 The following three litigations are pending before the Allahabad High Court, Lucknow Bench:

(1) Testamentary Case No. 3 of 2003 for grant of probate, filed by Dato Mohan Swami claiming to be the Executor under the alleged Will dated 9. 4.1996 of Swami Rama.

(2) Testamentary Case No. 1 of 2004 for grant of letters of administration in regard to estate of Swami Rama who died on 13.11.1996, filed by his son Mohit Kumar.

(3) Original Suit No. 865 of 1997 filed by Mohit Kumar, Lilu Kumar and Lt. General M.L.Dar(Retd.) and Himalayan Institute Hospital Trust represented by a Presidential Body consisting of the said three persons for a permanent injunction restraining defendants therein from interfering with the functioning of Himalayan

Institute Hospital Trust and its said Presidential Body, and seeking a declaration that nomination letter dated 5.11. 1996 in favour of Dato Mohan Swami and three others is null and void.

3. Himalayan Institute Hospital Trust(for short ""HIH Trust") was impleaded as fourth respondent in Test. Case No. 1/2004. A learned Single Judge of the Allahabad High Court by order dated 8.9.2006 allowed an application for deletion of fourth respondent(HIH Trust) from the array of parties in that case. He also rejected a subsequent application for recalling the said order, by order dated 22.9.2006. The said orders were challenged by the first respondent in two special appeals. A Division Bench of the High Court allowed the special appeals by common order dated 5.12.2006 with the following directions :

(a)The Himalayan Institute Hospital Trust through " its presidential body members" shall be impleaded as a party in Testamentary Case No. 1 of 2004.

(b) In matters where the said society (HIH Trust) is a party, both the rival groups namely the group of Dato Mohan Swami and three others and the group of Mohit Kumar and two others will be entitled to participate.

(c)The three cases(Testamentary Case No. 3/2003, Testamentary Case No. 1/2004 and OS No. 865/2007) shall be tried together by recording common evidence and the three cases shall be disposed of by common judgment and decree.

The said order of the Division Bench is challenged by the HIH Trust represented by Dato Mohan Swami, in this appeal by special leave..

4. After hearing the learned Counsel, and considering the factual background, and the nature of directions issued by the Division Bench, we are of the view that the said order requires certain modifications to remove the technical infirmities. This will also abate the anxiety expressed by the parties regarding delay in disposal.

5. Accordingly, we issue the following directions in modification of the impugned order of the High Court, with the consent of the parties:

(i) Testamentary Case No. 3/2003 and Testamentary Case No. 1/2004 shall be tried together by the High Court. Common evidence shall be recorded in the said two cases and they shall be disposed of by a common judgment.

(ii) OS No. 865/1997 shall be tried by the same Judge trying the said two cases, simultaneously but separately without clubbing it with the other two cases. To avoid any grievance of preference to a particular case, we request the High Court that Testamentary Case No. 3/2003 and Testamentary Case No. 1/2004 on the one hand and OS No. 865/1997 on the other, to be disposed of on the same date but by the separate judgments.

(iii) If any party wants the evidence led in the testamentary cases, to be read as evidence in the original suit or vice versa, appropriate application may be made

before the High Court for that purpose.

(iv) The High Court will endeavour to dispose of the three cases expeditiously, preferably within six months.

(v) Dato Mohan Swami (second appellant before us) shall enter appearance in O.S. No. 865/1997 where he is a defendant, on the next date of hearing before the High Court , without further notice(as undertaken by his counsel Sri Sanjeev Aggarwal.).

(vi) In place" Himalayan Institute Hospital Trust through its presidential body members" impleaded as a party, the following two groups shall be impleaded as respondent Nos. 4 and 5 in the Testamentary Case No. 1 of 2004:.

4.4(a) Dato Mohan Swami

4(b) Vijendar Chauhan

4(C) Vijay Dhasmana

4(d) Vikram Singh

Claiming to constitute the presidential body of members of Himalayan Institute Hospital Trust,

Jolly Grant, Dehradun.

5. 5 (a) Mohit Kumar

5(b) Lilu Kumar

5(c) Gen. M.L. Dar (Retd.)

Claiming to constitute the presidential Body of members of

Himalayan Institute Hospital Trust,

Jolly Grant, Dehradun.

(Vii) Nothing stated by the High Court or by this Court shall be construed as expression of an opinion on merits, or on any of the issues in the three pending cases.

6-The appeal is accordingly disposed of. Parties to bear their respective costs.

New Delhi March 27, 2008

26. In view of above factual position, now I proceed to decide the controversy between the parties raised by them in their applications and objections .

27 Sri Mohit Kumar in his application (C.M An. No43506 of 2008) has averted that five persons mentioned in this application claim adverse to him so they should be made party to the petition. There is nothing on the record that why these four persons were not made party earlier when they were claiming adverse

to the petitioner. Sri Mohit Kumar also failed to explain that when Hon''ble the Supreme Court decided Civil Appeal No. 2159 of 2008 with the consent of the parties on 27.3.2008 why this matter was not brought to the notice of the Hon''ble the Supreme Court. It is abundantly clear from the perusal of the above order dated 27.3.2008, passed by Hon''ble the Supreme Court in C.A. No. 2159 of 2008 that this order was passed with the consent of the parties by the Hon''ble Supreme Court , wherein it was finally decided that Himalyan Institute Hospital Trust as impleaded by the petitioner in the array of the parties would no more be a party to the proceeding and in its place the respondent Nos. 4 and 5 as described in para 5 (vi) would be substituted. Thus, the question of the parties required to be impleaded in the present matter has been finally decided by the Hon''ble Supreme Court. Thus petitioner's Application (C.M.A No. 43506 of 2008)purported to be Section 151 of the C.P.C. wherein the petitioner has sought impleadment of four new persons out of five persons , mentioned therein, after the final order passed by the Hon''ble Supreme Court is nothing but a device to delay the proceeding and as such the application of the petitioner is contrary to the directions issued by the Hon''ble Supreme Court vide order dated 27.3.2008 The petitioner did not comply the order dated 27.3. 2008 by moving appropriate application and instead move present application which is clearly contrary to the directions issued by Hon''ble the Supreme Court as stated above. Thus, C.M. An. No. 43506 of 2008 deserves rejection being clearly against the order, passed by Hon''ble Supreme Court on 27.3.2008 in C.A. No. 2159 of 2008.

28. So far as the C.M. Application No. 71747 of 2008 of the petitioner is concerned, it has two parts; one relating to impleadment of two groups of respondent No. 4 and 5 and another relating to substitution of new paragraph 6 by replacing old paragraph 6 of the petition.

29. The preliminary objection of respondent No. 3 to the above amendment application is that it has not been verified as per the provisions of Order VI Rule 15 C.P.C. That it should have been under Order 1 Rule 10 C.P.C. and not under Order VI Rule 17 and Section 141, 151 C.P.C. That it is not in term of Hon''ble Supreme Court's order dated 27.3.2008.

30. It was also contended on behalf of O.P. No. 3 that this petition ought to have been strictly as per the requirement of Section 278 of the Indian Succession Act but the petitioner has made it lengthy by introducing unnecessary facts in order to widen its scope and complicate the matter and as such para 6 of the petition is also liable to be struck out in view of C.M. An No. 109052 of 2008 moved by O.P. No. 3..

31. No doubt the present petition of issuance of Letters of Administration is contentious. Regarding the form and procedure to be adopted in this Court in these proceedings, Section 268, 295 and 300(1) of the Indian Succession Act are relevant , which are as under :

Section-268. Proceedings of District Judge's Court in relation to probate and

administration.-The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908. (5 of 1908.)

Section 295. Procedure in contentious cases.-In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908.) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

Section-300.(1)-Concurrent jurisdiction of High Court.-(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

32. It reveals from the perusal of Sections 268, 295 and 300 (1) of the Indian Succession Act quoted above that in the High Court also contentious proceedings of probate or Letter of Administration, shall be regulated by CPC so far as the circumstances of the case permit and the proceedings shall take as nearly as may be the form of a regular suit provided in the Code of Civil Procedure. Thus, the procedure and form adopted in this case shall be that of a regular suit provided in the Code of Civil Procedure.

33. As to the verification of the amendment application, Order VI Rule 15 C.P.C. provides that the pleadings shall be verified .Section 280 of the Indian Succession Act also provides that the petition for probate or Letter of Administration shall be verified by the petitioner in the manner provided in this Section. Thus this argument of petitioner is not tenable that amendment application in these proceedings does not require verification. In the present case, the petitioner in support of his application though has filed affidavit but has not verified the application at its foot as per the requirement of Order VI Rule 15 C.P.C. and Section 280 of the Indian Succession Act. It is settled law that if amendment or impleadment is liable to be allowed, the application cannot be rejected merely on the technical ground of non-verification and opportunity should be provided to the petitioner to remove deficiency within the time allowed by the court. In this connection the principles laid down by Hon''ble the Supreme Court in the case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, are material. Hon''ble the Supreme Court in this case has observed as follows (para 5):

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs.

However, negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

34. So far as this objection is concerned, that the matter pertains to impleadment, therefore, Order I Rule 10 of C.P.C. should have been written on the application, this objection is of no help to the opposite parties because merely the fact that a wrong section or provision has been quoted on an application, it does not make the application liable to be rejected on this ground. Therefore, this objection is also of no help to the opposite party No. 3. The impleadment of two groups of respondent No. 4 and 5 in the petition is not against the terms of the order passed by Hon'ble Supreme Court on 27.3.2008 but is in compliance of the order of Hon'ble the Supreme Court, which was passed with the consent of the parties, therefore it is liable to be allowed to this extent, subject to the removal of the defect of verification stated above.

35. The main lis between the parties is regarding para 6 and the form in which the petition has been drafted. Learned Counsel for the opposite party No. 3 contended that Section 278 of the Indian Succession Act itself provides that what should be the contents of a petition for Letter of Administration and no other matter except provided in this section, shall be written in the petition and since the petitioner has travelled beyond the scope of Section 278 of the Indian Succession Act, therefore under the provision of Order VI Rule 16 C.P.C, para 6 of the petition should be struck out. Contrary to it, the submission of the petitioner is that Section 278 does not prohibit the other necessary facts to be mentioned in the petition, therefore application of opposite party No. 3 to strike out para 6 from the petition, is devoid of merit and is merely a pressure tactics. He further submitted that amendment of para 6 has been necessitated due to impleadment of two groups of respondent No. 4 and 5 in the petition and is consequential to the order passed by Hon'ble the Supreme Court, therefore it should be allowed.

36. To decide this controversy it is necessary to go through the relevant provisions of Indian Succession Act, the Allahabad High Court Rules, 1952, O6 Rule 16 of the CPC as well as existing para 6 and proposed amendment of para 6 sought to be substituted.

Section 278 of the Indian Succession Act is as under:

278. Petition for letters of administration.-(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating--

- (a) the time and place of the destator's death;
- (b) the family or other relatives of the deceased, and their respective residences;
- (c) the right in which the petitioner claims;

- d) the amount of assets which are likely to come to the petitioner's hands;
 - (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
 - (f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.
- (2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

Rule 6 and 39 of Chapter XXX relating to Testamentary & Intestate Jurisdiction of The Allahabad High Court Rules, 1952 are also relevant which are as follows :

Rule-6. Application for letters of administration :- Application for Letters of administration shall be made by petition in the prescribed form or as near thereto as the circumstances of the case may permit and shall be accompanied by annexures (b) 96[(c) and (d)] mentioned in the last preceding Rule :

Provided that the application for grant of letters of Administration u/s 244 or 246 of the Act, shall also, if the petitioner is acquainted with the facts, state the age of the minor or shall be accompanied by the affidavit of the person who is so acquainted, stating the age of the minor.

Rule-39. Conversion of application into suit :- Upon the affidavit in support of the caveat being filed (notice whereof shall immediately be given by the caveator to the petitioner) the proceedings shall be numbered as a suit in which the petitioner for probate or letters of administration shall be the plaintiff, and the caveator shall be the defendant, the petition for probate or letters of administration being registered as and deemed a plaint filed against the caveator, and the objection filed by the caveator being treated as his written statement in the suit. The procedure in such suit shall, as nearly as may be, be according to the provisions of the Code.

Order 6 Rule 16 of the CPC reads as under-

Order 6 Rule 16. Striking out pleadings The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading--

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court.]

Existing Paragraph 6--

6. That in the so-called Will, the so-called beneficiary is a registered society,

Himalayan Institute Hospital Trust and the presidential body of the society, i.e. the opposite party No. 4 consists of Sri Mohit Kumar, the present applicant; Lt. Gen. M.L.Dar (Ret'd) and the petitioner Mrs. Lilu Kumar whereas the opp. Party No. 3 claims to be the presidential body member of the opp. Party No. 4 alongwith others on a forged nomination, the matter already sub-judice in Civil O.S. 865/97 pending restoration vide Misc. Case No. 183/20012 in the court of Ld. Civil Judge(S.D.) Dehradun.

Proposed amendment of Para 6 sought to be substituted.

6. That, in the alleged Will the alleged beneficiary is a society, Himalayan Institute Hospital Trust. The presidential body of the society, i.e. Himalayan Institute Hospital Trust consists of Mohit Kumar, the present applicant; Lt. Gen. M.L.Dar(Ret'd) and Mrs. Lilu Kumar nominated by Sri Swami Rama vide nomination letter dated November 10th 1996 executed by him. The opposite party No. 3 claims to be the presidential body member of the society, Himalayan Institute Hospital Trust along with Sri. Vijendra Chauhan, Sri. Vijay Dhasmana and Sri. Vikram Singh on a forged, fabricated and void ab initio nomination.

37. A conjoint reading of above quoted Section 278 of the Indian Succession Act, Rule 6 and 39 of Chapter XXX of the Allahabad High Court Rules, 1952, makes it clear that the petition for grant of Letters of Administration, may also contain the other particulars besides the particulars mentioned in Section 278 of the Indian Succession Act. Rule 6 of the Chapter XXX of the Allahabad High Court Rules 1952, specifically provides that application for Letter of Administration shall be made by the petitioner in prescribed form or as near thereto as the circumstances of the case may permit. The use of the words "as near thereto as the circumstances of the case may permit" in Rule 6 above, is of vital importance which clearly shows that besides the particulars mentioned in Section 278 of the Indian Succession Act, other particulars may also be given and as such the objection of the opposite party No. 3 that petitioner has traveled beyond the scope of Section 278 of Indian Succession Act, therefore para 6 of the petition be struck out, is not tenable. It is also pertinent to note here that the matter went up to the Hon'ble Supreme Court and the opposite party No. 3 had not raised any objection on the averments made by the petitioner in existing paragraph 6 of the petition. It is settled law that application for striking out pleading should be made promptly, but no such application was moved before this application by the O.P. No. 3 though this matter pertains to the year 2002. Further the averments of existing para 6 do not appear unnecessary, scandalous, frivolous or vexatious. The pith and substance of the averments of para 6 of the petition is that Himalayan Institute Hospital Trust is a registered society and the dispute regarding the membership of its presidential body, between the parties is sub-judice in O.S. No. 865 of 1997. This is a fact that the said suit between the parties is pending for adjudication in this Court, which shall be decided along with this petition. Thus the averments of existing para 6 of the petition can not

be said unnecessary. In view of these circumstance C.M. An. No. 109052 of 2008 filed by O.P. No. -3 for striking out existing para 6 of the petition is liable to be rejected.

38. The next point that comes up for decision is as to whether the amendment in para 6 as proposed by the petitioner, is necessary for the decision of this petition. To decide this controversy, it is necessary to go through the contents of existing para 6 and the proposed amendment sought to be incorporated in para 6.

39. The existing paragraph 6 contains averments that the Himalayan Institute Hospital Trust is a registered society and the dispute between the parties regarding membership of its presidential body, is sub-judice in Civil O.S. 865/97.

40. By proposed amendment, the petitioner wants that the words ""so called" be substituted by word ""alleged" (wherever occurred in para 6). The next amendment sought is the deletion of word ""registered" before ""the society". Thus, the petitioner wants to raise a new dispute regarding the registration of the society. What has necessitated these amendment in the petition, the petitioner is silent in the amendment application. Thus, this amendment is being sought without any ground just to complicate the matter and as such it cannot be said bonafide or necessary for the just decision of the case. Therefore, these amendments are liable to be refused.

41. By the proposed amendment in para 6, the petitioner wants to delete the factum of pendency of O.S. No. 865 of 1997 between the parties regarding the dispute of presidential body membership. It is pertinent to note that O.S. No. 865/1997 is still pending between the parties and is to be decided with this testamentary case. In this connection, learned Counsel for the opposite party No. 3 has contended that the testamentary court has limited jurisdiction and the question of title or right of the parties regarding the property or its management, cannot be gone into which the petitioner wants to raise by proposed amendment. On the other hand, Shri Mohit Kumar has contended that since these testamentary proceedings are contentious, therefore they shall be treated as a suit and if any matter (incidentally) comes regarding the title, that can be decided by the testamentary court.

42. Both the parties in support of their respective contentions have relied on the case law cited in paragraphs 18 and 19 of this order. It reveals from the perusal of the rulings cited by the petitioner that most of them relate to the fact that in case there is a contest between the parties in testamentary proceedings, it become contentious and shall take the form of a suit and shall be decided according to the provisions of C.P.C. meant for the decision of the suit. There is nothing in the said rulings that the dispute relating to the membership of presidential society relating to the management of the property for which a separate civil suit is pending, can be decided by the testamentary court in testamentary proceedings. No doubt, if a question incidentally comes before a testamentary court, that can be decided but the dispute which is main dispute

and the sole subject of the original suit pending between the parties, that cannot be said an incidental in the testamentary proceedings.

43. It reveals from the perusal of the rulings cited by the learned Counsel for the opposite party No. 3 that it has been clearly held therein that the dispute of title of the property dealt in the Will cannot be decided in the proceedings for probate or Letter of Administration and the determination of such right between the parties may be done in a civil suit and not in the testamentary case. In case of *M. Madhavan Nair Jayasree Vs. Manjeri Municipality and Another*, it has been held that the mere fact that the application is contentious, will not convert it into a suit. The fact that contentious testamentary proceedings shall be decided by the form and procedure prescribed for a suit does not make the testamentary proceedings a suit for all purposes. In this matter, it is pertinent to note that the Hon'ble Supreme Court in Civil Appeal No. 2159 of 2008 arising out of SLP No. 463 of 2007 *Himalayan Institute Hospital Trust and Ors. v. Mohit Kumar and Ors.* has specifically directed that the Original Suit No. 865 of 1997 shall be tried separately without clubbing it with the other two testamentary cases and shall be disposed of by separate judgment but on the same day on which testamentary cases shall be decided. Thus, it is abundantly clear that the matter which is in dispute between the parties in the original suit, cannot be brought in this testamentary proceedings. By proposed amendment, the petitioner wants to delete the fact that the dispute between the parties regarding the membership of its presidential body, is subjudged in Civil O.S. No. 865 of 1997 and wants to bring the factum of dispute by way of amendment in these proceedings which is not permissible in view of the specific direction of the Hon'ble Supreme Court in Civil Appeal No. 2159 of 2008. The description of groups which are to be arrayed as respondent is already in the petition, therefore, there is no necessity of duplicacy. In view of these facts, the amendment of para 6 as proposed by the petitioner, is not in terms of the order dated 27.3.2008 passed by the Hon'ble Supreme Court as such cannot be permitted and to this extent, this application is liable to be rejected.

44. So far as the C.M.Application No. 6216 of 2009 moved by the petitioner and its objection C.M.Application 14941 of 2009 filed by the opposite party No. 3 are concerned, it reveals from the perusal of the record that the Hon'ble Supreme Court in its judgment dated 27.3.2008 in para 5(iii) had directed that if any party wants the evidence lead in the testamentary case to be read as evidence in the Original Suit or vice versa, the appropriate application may be made before the High Court for that purpose. The contention of Shri Mohit Kumar is that he has moved this application in compliance of the said direction issued by the Hon'ble Supreme Court. Contrary to it, the learned Counsel for the opposite party No. 3 has contended that the application is premature and such an application can only be moved when the evidence is led and a party wants that such separate evidence be read in other case and a blanket order to read the evidence of one case in other case cannot be passed and was also not given by the Hon'ble Supreme Court too. It has also been contended that this application is also vague

and premature and is liable to be rejected.

45. It reveals from the perusal of the record that Hon''ble the Supreme Court has not consolidated the original suit with the testamentary cases. The evidence in original suit is to be recorded seprate from that of testamentary cases .The evidence is yet to be adduced by the parties. It reveals from the perusal of the application that it is not specific on the point which evidence the petitioner wants to be read in original suit and vice versa and as such the application is vague and premature and is liable to be dismissed. However, the petitioner is at liberty to move application at appropriate stage when evidence is led, specifying the evidence that it be read as evidence in another case This application is disposed of accordingly.

46. In view of the above, the applications are being disposed of as follows:

1. C.M.Application No. 43505 of 2008 moved by the petitioner had become infructuous when C.M.Application No. 71747 of 2008 was moved by the petitioner on 18.8.2008. Therefore, it is dismissed as infructuous.

2. C.M.Application No. 43506 of 2008 moved by the petitioner is misconceived and against the specific order dated 27.3.2008 passed by the Hon''ble Supreme Court in Civil Appeal No. 2159 of 2007 (arising out of SLP No. 463 of 2007). It is accordingly rejected.

3. C.M.Application No. 71747 of 2008 moved by the petitioner is partly allowed to the extant that the proposed impleadment of respondent No. 4 and 5 in the array of the respondents, shall be incorporated in the petition strictly in terMs. of the order dated 27.3.2008 passed by the Hon''ble Supreme Court in Civil Appeal No. 2159 of 2008 (arising out of SLP No. 463 of 2007).after recording verification on the amendment application in terMs. of the order VI Rule 16 C.P.C. within a period of seven days from today. The other amendments in para 6 of the petition as proposed by the petitioner, is refused. This application alongwith objection is disposed of accordingly

4. That C.M.Application No. 109052 of 2008 moved by the opposite party No. 3 for striking out original para 6 from the petition, for the reasons stated above, .is rejected.

5. C.M.Application No. 6216 of 2009 moved by the petitioner is rejected as premature However, the petitioner is at liberty to move application at appropriate stage when evidence is led, specifying the evidence that it be read as evidence in another case. The application alongwith the objection, is disposed of according.

List this case on 14.5.2009 at 3.00 p.m. for further orders Testamentary Case No. 3 of 2003 and Original Suit No. 865 of 1997 shall also be listed on that date for evidence of the parties.