

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

Date of Order: 25.03.2010

CM(M) No.194 of 2010

%

25.03.2010

RAJU AND OTHERS

... Petitioner

Through: Mr. UBS Yadav, Advocate

Versus

GAINDA DEVI

... Respondents

Through: Nemo.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER (ORAL)

1. By this petition, the petitioners have assailed an order dated 5th November, 2009 whereby an application of the petitioners under Order I Rule 10 of CPC was dismissed.

2. The petitioners are sons of late Shri Phool Singh who was defendant in a suit titled as "*Smt. Gainda Devi Vs. Shri Phool Singh*". After the death of Phool Singh, Smt. Shanti Devi, mother of the petitioners, made an application to bring her on record as the LR of late Shri Phool Singh on the ground that late Phool Singh had left behind a *Will* bequeathing his interest in the suit property in her favour. The petitioners did not contest this position and did not challenge the

validity of the *Will* and it was the case of the petitioners that the suit property was bequeathed by deceased defendant in favour of Smt. Shanti Devi by a *Will*. In view of the stand taken by the petitioners, Smt. Shanti Devi was impleaded as LR of the deceased defendant vide order dated 15.05.2008. The petitioners subsequently, made this application under Order I Rule 10 of CPC claiming that since they were also in possession of the property after the death of Phool Singh they were also necessary party to the suit, therefore, they should be impleaded as parties. This application was dismissed by the Trial Court on the ground that the applicants have no independent right as per their own averments in the suit and their presence in the suit was not necessary for adjudication of the matter in dispute.

3. It is settled law that where a defendant dies, those persons, who after death represent his estate, are to be brought on record as his LRs. Since the suit in question is in respect of the property and undisputedly, the deceased had executed a Will in favour of his wife bequeathing the property to his wife to the exclusion of present applicants, and the applicants had not challenged the correctness of the Will, the applicants cannot be impleaded as parties to the suit, either as legal representatives or as necessary parties.

4. The plea taken by the petitioners that they were in possession of the property and therefore were necessary parties, is a baseless plea. Every family member of the owner of the property is in possession of the property because of the permission given by the owner of the property. Each one of them is not required to be impleaded as a party. Only those persons are required to be

impleaded as a party, after the death of defendant, who represent his estate or whose presence is necessary for the adjudication of the issues.

5. In the present case, neither the applicants represent the estate nor was their presence considered necessary by the Trial Court for adjudication of the dispute. The Trial Court rightly dismissed the application.

I find no force in this petition. The petition is dismissed.

March 25, 2010
acm

SHIV NARAYAN DHINGRA, J.