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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.279 of 2010 & C.M. Appl. Nos.3810-3811 of 2010

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12.03.2010

B.P. SHARMA THRU. LRS.

.....Petitioner

Through: Mr. Ram Lal Gupta & Mr. Sandeep Garg,
Advocates.

Versus

JAVITRI SHARMA

.....Respondent

Date of Reserve: 2nd March, 2010

Date of Order: March 12, 2010

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?

J U D G M E N T

1. This present petition has been preferred against an order dated 1st February, 2010 whereby the learned trial court allowed an application made by one Sh. R.P. Sharma in a suit pending before the trial court titled *Smt. Javitri Devi Sharma Vs. Sh. B.P. Sharma*.

2. Smt. Javitri Sharma had expired on 12th September, 2009 and the application was made by Sh. R.P. Sharma on the ground that Smt. Javitri Sharma's husband was already dead. Smt. Javitri Sharma had left behind a registered Will dated 19th March, 1998. As per this Will, she had given responsibility to Prem Sukh Trust, a Trust created by her late husband, to pursue the litigation initiated by her during her lifetime. The trustees of Prem Sukh Trust, in a meeting, authorized Sh. Rameshwar Prasad Sharma, nephew of deceased Smt. Javitri Sharma to be the President of the Trust and also authorized him to contest the litigation on her behalf. Thus, Sh. R.P. Sharma moved application to be impleaded as

legal heirs for the purpose of contesting the litigation filed by Smt. Javitri Sharma. The pending suit in which the application was made had been filed by Smt. Javitri Sharma against Sh. B.P. Sharma, who was also one of the nephews of Smt. Javitri Sharma.

3. It is stated by defendants, legal heirs of Sh. B.P. Sharma that after death of Smt. Javitri Sharma, he being a nephew, would have been the legal representative of Smt. Javitri Sharma and since defendant Sh. B.P. Sharma was dead, his legal heirs would be the legal representative of Smt. Javitri Sharma. No right to sue survived after death of Smt. Javitri Sharma in favour of Sh. R.P. Sharma or the Trust against the legal heirs of Smt. Javitri Sharma, who were defendants.

4. A perusal of reply shows that Sh. B.P. Sharma had claimed to be an adopted son of Sh. K.L. Sharma, husband of Smt. Javitri Sharma. Smt. Javitri Sharma in the suit had denied this fact and had filed the suit contesting the claim of Sh. B.P. Sharma being an adopted son. The issue in the suit to be decided by the court was whether Sh. B.P. Sharma was an adopted son of Sh. K.L. Sharma or not. Adoption is a fact which is to be proved in accordance with law. The court could not have held Sh. B.P. Sharma as legal heir of Smt. Javitri Sharma or Sh. K.L. Sharma unless and until adoption had been proved. Thus, the plea taken by the present petitioner that legal heirs of Sh. B.P. Sharma represented estate of Smt. Javitri Sharma or Sh. K.L. Sharma after their death is a fallacious plea. Legal heirs of Sh. B.P. Sharma cannot represent the estate of Smt. Javitri Sharma or Sh. K.L. Sharma, unless and until adoption as a matter of fact stands proved. Since Smt. Javitri Sharma had challenged the adoption and filed the present suit, the court could not have treated legal heirs of Sh. B.P. Sharma as legal heirs of Smt. Javitri Sharma and the court, in accordance with the Will of Smt. Javitri Sharma, rightly impleaded the applicant as the person who represented Smt. Javitri Sharma's estate after her death.

5. It is submitted by counsel for the petitioner that unless and until the Will was proved, the applicant could not have been impleaded as legal heir of deceased Smt. avitri Sharma. He relied upon *T. Venkata Narayana vs. V. Subbama*; 1996 RLR (NSC) 135 and on *Uma Devi Nambiar vs. T.C. Sidhan*; 2004 RLR 39 (NSC). In *T. Venkata Narayana's* case (*supra*), the legal heirs wanted to give secondary evidence of a Will alleged to have been written by the deceased on the ground that the original Will was lost. Under these circumstances, the court held that a party cannot seek to prove a Will in a suit for injunction. In *Uma Devi Nambiar's* case, the court held that genuineness of the Will has to be established in a regular suit and the district judge while dealing with an application under Section 192 could not have ventured to adjudicate about genuineness of the Will in a summary manner.

6. Both these judgments are of no help to the petitioner. In the present case, the only issue before the trial court was whether the applicant should be impleaded as a legal heir after death of the plaintiff or not. The respondent's plea that the respondents were legal heir could not have been accepted by the trial court and since the deceased had executed a Will wherein it was specifically provided who shall continue litigation after her death, the trial court rightly impleaded the applicant as legal heir.

7. I find no merits in this petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 12, 2010
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