

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

+ CM (M) 719/2010

Date of Decision: 10.10.2012

SUBHA CHAWLA

..... Petitioner

Through: Mr.Abhay Kumar, Mr.Upendra
Singh, Advs.

Versus

HARISH CHAWLA & ORS

..... Respondent

Through: Mr.Abhijat, Mr.H.H.Haran,
Advs.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution is directed against the order dated 22.02.2010 of Additional District Judge, Central-14, Delhi whereby application under Order 22 Rule 3 CPC, filed by the petitioner herein, was dismissed.

2. Smt. Kartar Rani Chawla, the mother of the petitioner/applicant had filed a suit for recovery under Order 33 CPC against her son Harish Chawla, his wife and children. The plaintiff died during the pendency of the suit and whereupon an application under Order 22 Rule 3 CPC was filed by the petitioner for her substitution in the place of her mother on the ground of her being natural heir of her deceased mother as also on the ground that her deceased mother had left behind

a *Will* dated 10.10.2008 in her favour and thus, the right to sue, as plaintiff, survives in her favour and to the exclusion of her other sisters who were not interested in prosecuting the suit filed by her deceased mother.

3. Vide the impugned order the learned ADJ not only dismissed the application, but also the suit, observing that the right to sue did not survive in favour of the petitioner (applicant before the ADJ) inasmuch as, as per Section 14(2) of Hindu Succession Act, the deceased/plaintiff herself had a limited right in the property during her life time as per the *Will* executed by her late husband in her favour. From the impugned order it is apparent that the learned ADJ seems to have overlooked the importance of the provisions contained in Order 22 Rule 3 CPC and has given overriding effect to the provisions contained in section 14(2) of the Hindu Succession Act. Vide the impugned order the learned ADJ indirectly held the suit to be abated on the death of the plaintiff. The law in this regard seems to have been overlooked by the learned ADJ. Once the substitution application was filed, the Court was under an obligation to decide the application and could not decide the suit as abated. Decision on the application of substitution was not to be a decision on the merits of the case in the light of section 14(2) of the Hindus Succession Act. They both are independent provisions and would have their application at appropriate stage. An application filed by the petitioner/applicant could not be said to be invalid even if it was filed by her alone. Besides that she was

claiming herself to be the sole legal representative by virtue of a *Will* of her deceased mother/plaintiff, she was also undisputedly a natural heir of the deceased, being her daughter. Being a legal representative, she was competent to file the application for substitution as the words 'legal representative' in Sub-Rule (1) do not mean all the legal representatives. These words have to be construed as including those persons who are in a position to carry on further proceedings in the suit. It was another aspect if other legal heirs including the three sisters and one brother Bharat Bhushan were unwilling to join or that the petitioner alone was entitled to be substituted as per the *Will*. No findings have been given by the learned ADJ in this regard.

4. In view of my above discussion, the impugned order of the ADJ suffers from manifest illegality and is not sustainable as per law. The same is set aside. The matter is remanded back to the learned ADJ with the direction to decide the application under Order 22 Rule 3 CPC of the petitioner afresh as per law, by taking appropriate note of the fact that according to the petitioner's own showing, she has three sisters, who according to her are not willing to join. It is also gathered that she also has one brother namely Bharat Bhushan, who is another natural legal heir of the deceased. The learned ADJ shall decide the application taking note of all these aspects as also the *Will* allegedly executed by the deceased in favour of the petitioner.

5. With these directions, the impugned order is set aside and the petition stands disposed of. The parties shall appear before the Court of learned ADJ on 31.10.2012.

M.L. MEHTA, J.

OCTOBER 10, 2012

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