



2026:DHC:7055



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

CNR No. DLHC010355182026

*Reserved on: 05.08.2026
Date of Decision: 24.08.2026*

+ **CM(M) 1720/2026 & CM APPL. 51088/2026 & CM APPL.
51089/2026**

DIWAKAR KAUSHIK

.....Petitioner

Through: **Mr. Medhanshu Tripathi, Ms. Aditi
Singh and Ms. Arvinder Kaur,
Advocates**

versus

**B P SHARMA (SINCE DECEASED) THROUGH HIS CLASS 1
LEGAL HEIRS**

.....Respondent

Through: **Ms. Purnima Maheshwari and
Mr. Mukul Aryan, Advocates for R-1
(1A to 1E)**

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

1. The present petition impugns order dated 26.05.2026 passed by the learned District Judge-02 & Waqf Tribunal, Patiala House Courts, New Delhi¹ in CS No. 173/2017 (previously CS OS 501/2009) titled “*B.P. Sharma & Anr. v. Narottam Singh Chopra*”, whereby the learned Trial Court dismissed the application filed by the petitioner under Section 151 of

¹ Hereinafter ‘Trial Court’



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the Code of Civil Procedure, 1908², seeking to substitute himself as the LR of Sh. Narottam Singh Chopra/deceased defendant.

2. The facts emerging from the record are that the underlying suit for specific performance was instituted in 2009 by the respondents No.1 and 2/plaintiffs in respect of property bearing No. C-82, Anand Niketan, New Delhi, on the basis of an agreement to sell dated 16.06.2004, purportedly executed by the deceased defendant, for a sale consideration of Rs. 60,00,000/-.

3. The deceased defendant being the sole defendant therein, contested the suit during his lifetime by filing a written statement, denying the execution of any enforceable agreement and disputing the sale consideration.

4. During the pendency of the suit, the petitioner herein, Sh. Diwakar Kaushik, represented the deceased defendant before the learned Trial Court as the deceased defendant's General Power of Attorney holder.

5. The learned Trial Court *vide* order dated 30.04.2019, closed the defendant's evidence and listed the matter for final arguments.

6. On 14.11.2022, the deceased defendant executed a registered will bequeathing the suit property to the petitioner. Subsequently, the deceased defendant passed away on 01.02.2024. Following his demise, on 16.05.2024, the petitioner filed an application under Section 151 of the CPC before the learned Trial Court seeking to substitute himself as the LR of the deceased defendant, on the strength of the registered will.

7. Simultaneously, on 02.08.2024 respondents No. 1 and 2 filed an

² Hereinafter 'CPC'



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application under Order XXII Rule 4 of the CPC before the learned Trial Court, seeking substitution of the Class I legal heirs of the deceased defendant, i.e., respondents No. 3-6, as LR's of the deceased defendant. The learned Trial Court *vide* order dated 07.11.2025, allowed this application and brought the Class I legal heirs on record.

8. Concurrently, the petitioner instituted probate proceedings bearing PC No. 40/2025 before the learned Trial Court, in respect of the will dated 14.11.2022, which remain pending.

9. Thereafter, the learned Trial Court *vide* the impugned order dated 26.05.2026, dismissed the petitioner's application seeking to substitute himself as LR of the deceased defendant. The relevant para of the impugned order is reproduced hereunder:

“The applicant's assertion of any right over the property in question would be determined by the validity of the WILL, which is subject matter of separate Probate case. In a suit of Specific Performance, the presence of such party is necessary which can effectually adjudicate the issue involved. The suit for Specific Performance can not be allowed to be converted into suit of title by allowing any party to be impleaded whose rights are still not determined and adverse to the legal heirs of the deceased defendant. Accordingly, the application is dismissed.

Let the matter be now listed for consideration of the application U/O VII Rule 11 CPC on 29.08.2026.”

10. Aggrieved thereby, the petitioner has preferred the present petition.

11. It is submitted by the learned counsel for the petitioner that as per Section 2(11) of the CPC, an LR includes any person who in law represents the estate of a deceased person, and as a beneficiary under the registered will executed by the deceased defendant, the petitioner squarely falls within this definition, and is therefore entitled to be substituted as an LR.



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12. It is further submitted that the learned Trial Court failed to exercise the jurisdiction vested in it by law, by failing to examine the claim of the petitioner for substitution as an LR, as is contemplated under Order XXII Rule 5 of the CPC.

13. It is also the case of the petitioner that pendency of probate proceedings in respect of the registered will cannot be treated as a bar to the petitioner's substitution as LR of deceased defendant, as the substitution is sought merely for limited representation of the deceased defendant's property in the underlying suit, and not for final testamentary adjudication.

14. *Per Contra*, the learned counsel for the respondents submits that the learned Trial Court *vide* order dated 07.11.2025, has already brought on record the Class I legal heirs of the deceased defendant, i.e., respondents No. 3 to 6, under Order XXII Rule 4 CPC. Since the interest of the deceased defendant is already adequately represented, there is no requirement to substitute the petitioner as an LR.

15. Learned counsel for the respondents further submits that the petitioner is not a necessary party for determining the issue of specific performance, and his absence would not impede the passing of an effective decree in the underlying suit.

16. In support of the aforesaid contentions, the respondents place reliance on ***Kasturi v. Iyyamperumal***³, to argue that the scope of a suit for specific performance cannot be expanded into a title dispute by substituting the petitioner herein; who is not a necessary party, for the adjudication of such suit.

³ (2005) 6 SCC 733.



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17. Heard. Perused the record.

18. It is settled that a suit for specific performance is primarily concerned with the enforcement of obligations between the contracting parties to an agreement. It is also settled that the necessary and proper parties in such a suit are only the contracting parties to that agreement or their LRs. Therefore, substituting a party; such as the petitioner herein, who asserts an independent title, enlarges the scope of the suit from one for specific performance into a title dispute, and therefore such a party is neither a necessary nor a proper party for effective adjudication.

19. In the present case, the petitioner was not a party to the agreement to sell dated 16.06.2004, and has founded his claim upon a contested will, thus the petitioner herein is not a necessary party. Therefore, it is clear that an effective decree can be passed in the underlying suit in the absence of the petitioner as well.

20. In any case, if the substitution of the petitioner were to be allowed, it would amount to enlargement of the scope of the suit, from a suit for specific performance into a title dispute. Furthermore, the disputes pertaining to the will are to be decided in the probate proceedings, which remain pending.

21. In view of the aforesaid observation, it is also pertinent to emphasize on the principles laid down by the Hon'ble Supreme Court in **Varadarajan v. Kanakavalli**⁴, where the Hon'ble Supreme Court has laid down that the determination as to who is an LR; under Order XXII Rule 5 of the CPC, is confined to the adjudication of that particular case, and that inter se title

⁴ (2020) 11 SCC 598



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disputes between the parties have to be adjudicated in independent probate proceedings. The relevant portion of the aforesaid judgment is reproduced hereunder:

“12. In another judgment in *Jaladi Suguna v. Satya Sai Central Trust* [*Jaladi Suguna v. Satya Sai Central Trust*, (2008) 8 SCC 521], this Court held that the determination as to who is the legal representative under Order 22 Rule 5 of the Code is **for the limited purpose of representation of the estate of the deceased and for adjudication of that case**. This Court held as under: (SCC p. 526, para 15) “15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. *The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject-matter of the suit, vis-à-vis other rival claimants to the estate of the deceased.*”

13. In another judgment in *Suresh Kumar Bansal v. Krishna Bansal* [*Suresh Kumar Bansal v. Krishna Bansal*, (2010) 2 SCC 162: (2010) 1 SCC (Civ) 365], this Court held as under: (SCC p. 167, para 20) “20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under **Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record** for the conducting of those legal proceedings only and does not operate as res judicata **and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings**. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.””



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22. Additionally, the legislative intent behind Order XXII of the CPC, is to ensure that upon the death of a party, the subject matter of the dispute does not remain unrepresented during the subsistence of litigation. In the present case, the learned Trial Court *vide* order dated 07.11.2025, has already brought on record the Class I legal heirs of the deceased defendant, i.e., respondents No. 3 to 6, therefore the interest of the deceased defendant is adequately represented in the underlying suit, and the substitution of the petitioner as an LR is therefore not required.

23. It is the considered opinion of this Court that the underlying suit, which was instituted in 2009 and remains pending at the stage of final arguments since 2019, must not be derailed by collateral title disputes at the fag-end of the trial.

24. In view of the above findings, this Court finds no illegality, material irregularity, or jurisdictional error in the impugned order dated 26.05.2026.

25. The petition is hereby dismissed. All pending applications, if any, also stand disposed of.

26. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J

AUGUST 24, 2026
gs/as