

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

+ CM(M) 470/2015

% Decided on: 19th May, 2015

MAJ AJIT SINGH RATHI & ANR Petitioner
Through Mr. Raj Kumar Sherawat, Adv.

versus

VIJAY LAXMI & ANR Respondent
Through None.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 9269/2015

Exemption allowed, subject to all just exceptions

CM(M) 470/2015 & CM 9268/2015 (stay)

1. Aggrieved by the order dated 7th April, 2015 whereby application of the respondents under Order 1 Rule 10 CPC was allowed, the petitioners prefer the present petition.

2. Gordhan Singh Rathi filed Suit No.611/2012 against his co-sharers Bali Singh & others. During the pendency of the suit, Gordhan Singh Rathi passed away and thus an application under Order XXII Rule 3 CPC was filed by Krishan Singh Rathi stating that Gordhan Singh Rathi had three sons namely Major Ajit Singh Rathi, late Shri Inder Singh Rathi and Krishan Singh Rathi and one daughter namely Smt. Jagwati. The second son of Gordhan Singh predeceased him leaving behind his wife Smt. Vijay Kakshmi and two sons namely Karamvir Singh and Jitender. During his life

time, Gordhan Singh disowned Smt. Vijay Lakshmi and her two sons from all his moveable and immovable properties thus they do not qualify to be the legal heirs of the plaintiff. Copies of death certificate of Gordhan Singh and public notice of disownment were enclosed. It was thus prayed that Major Ajit Singh Rathi, Krishan Singh Rathi and Smt. Jagwati Devi in whom the right to sue survived, be impleaded as legal heirs of the plaintiff. The other legal heirs of Gordhan Singh i.e. Smt. Vijay Lakhshmi and Jitender Singh Rathi filed an application under Order 1 Rule 10 CPC seeking impleadment as legal heirs. Thus the learned Trial Court decided both the applications under Order 22 Rule 3 CPC moved by the petitioners herein and under Order 1 Rule 10 CPC moved by the respondents herein together vide the impugned order.

3. It was held vide the impugned order that the fact that Vijay Laxmi and Jitender Singh were legal heirs of late Inder Singh pre-deceased son of late Gordhan Singh was not disputed, thus they were Class I legal heirs of Gordhan Singh and were entitled to the property of Gordhan Singh in proportionate share as per Section 8 read with Section 10 of Hindu Succession Act. The disownment through publication has no legal sanctity and the existence of Will was a disputed fact and the same cannot be decided without going into evidence. Thus, Ajit Singh Rathi, Krishan Singh Rathi and Jagwati Devi were arrayed as plaintiffs as LR's of Gordhan Singh and Vijay Laxmi and Jitender Singh Rathi were arrayed as defendants exercising discretion available under Order 1 Rule 10(2) CPC.

4. Learned counsel for the petitioners contends that there was ample evidence to show that Gordhan Singh disowned Vijay Laxmi and her two sons. In view of the Will which did not leave to the inheritance of Vijay

Laxmi and her sons anything, they were not necessary parties to a suit between Gordhan Singh and his co-sharers Bali Singh and others. Reliance is placed on Arjun Prasad & Ors. Vs. Biteshwar Singh AIR 1982 Patna 208.

5. Heard learned counsel for the petitioners.

6. The decision in Arjun Prasad (supra) has no application to the facts of the present case as the Court therein held that if without grant of a probate or letters of administration a legatee can institute a suit on the death of the testator, there is no reason why the legatee cannot be succeeded as a legal representative and thereby continue the prosecution of the suit instituted by the testator. In the present case though the factum of genuineness of the Will is not required to be decided in the suit, however the fact whether Gordhan Singh disowned Smt. Vijay Laxmi and her sons is a disputed fact and sanctity of the notice of disownment is required to be proved. Thus Vijay Lakshmi and Jitender who have filed the application under Order 1 Rule 10 CPC have every right to prove that they continue to be the Class-I legal heirs to the estate of Gordhan Singh and are entitled to inherit the same. They are necessary parties to the proceedings in the suit and hence the learned Trial Court committed no error in allowing the application under Order 1 Rule 10 CPC.

7. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 19, 2015
‘v mittal’