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

+ CM(M) 231/2014

DIPANK SHARMA & ORS

..... Petitioners

Through: Mr.Dinesh C. Pandey, Ms.Jyoti
Pandey, Mr.Tushar Sharma and
Mr.Rajeev Gurung, Advocates

versus

KARMYOGI BUILDERS PVT LTD & ORS

..... Respondents

Through: Mr.Pawanjit Singh Bindra, Advocate
for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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29.09.2016

1. The present petition is filed seeking to impugn the order dated 16.01.2014 passed under Order 47 read with Section 114 CPC and order dated 5.10.2012 by which an application filed by the petitioner under Order 22 Rule 3 CPC for impleadment as legal representatives of deceased plaintiff No.1/ Sh. Ramakant, was dismissed.
2. The plaintiff namely, late Sh. Ramakant and petitioner No.4 filed the present suit for declaration and permanent injunction seeking declaration that the Agreement to Sell entered into by the respondents pertaining to a plot/land was illegal and a decree of injunction restraining the respondent from effecting sale of plots in

the project at Kant Enclave Faridabad. Other connected reliefs were also sought for. The disputed is related to the the project known as Kant Enclave, Village Anangpur, Tehsil Ballabhgarh, District Faridabad, Haryana..

3. Sh.Ramakant died on 2.4.2012. According to the petitioners, he has left behind a registered Will dated 23.04.2005 declaring his Estate/properties both moveable & immoveable in favour of his two grandsons/petitioners No.1 and 2. The said petitioners No.1 and 2 filed the present application under Order 22 Rule 3 CPC for impleadment in place of deceased plaintiff No.1, Sh. Ramakant Sharma. The application under Order 22 Rule 3 CPC states that in view of the Will of late Sh. Ramakant, who died on 2.4.2012, entire estate/properties have been bequeathed in favour of two grandsons, namely, Deepank Sharma and Piyush Sharma.
4. The Trial Court, vide the impugned order dated 5.10.2012 noted that the suit has been instituted by the plaintiff in the capacity as partner in the firm Ramakant & Co. It further held that on the death of the partner in the firm, the impleadment of LR's in his place to represent the firm and to claim his share in the firm, requires consent of all the existing partners and hence without filing a fresh deed of partnership, the Trial Court concluded that the present petitioners cannot be impleaded as parties to the suit and dismissed the application.
5. Learned counsel appearing for the petitioner had pointed out that a

cross suit has been filed by the respondent. In the cross suit, the said respondents have also moved an application under Order 22 Rule 4 & 9 CPC for substituting the legal representative of the deceased late Sh. Ramakant Sharma. The said application sought to implead the sons and daughters of late Sh. Ramakant Sharma, and it was clearly stated in the application by the respondent that their impleadment application does not amount to admission on the part of the respondents that the legal heirs mentioned in the application are partners of the partnership firm R. Kant & Co.

6. Learned counsel for the respondent, on the other hand, submitted that he has no objection, in case, the sons and daughters of late Sh. Ramakant Sharma are impleaded subject to the caveat they have placed in the cross-suit i.e. the impleadment may not amount to an admission that they have become partners of the firm R. Kant & Co. He further submits that in case the petitioner seeks to be impleaded, based on the strength of the Will of late Sh. Ramakant Sharma, they have to first prove the Will and an enquiry under Order 22 Rule 5 is to be conducted.
7. In my opinion the stand of the respondent is entirely misplaced. Firstly, no probate of Will is mandatory in Delhi. Secondly, it is not a disputed fact that the sons and daughters of late Sh. Ramakant Sharma have given their 'No Objection' to the petitioners No.1 and 2 being impleaded as the legal representatives of late Sh. Ramakant Sharma. In the absence of any dispute within the family about the Will of Sh. Ramakant it is not clear what

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enquiry is to be conducted under Order 22 rule 5 CPC. The petitioners are in the given facts the legal heirs of Shri Ramakant and are entitled to be impleaded in the suit as such.

8. In view of the above, the present petition is allowed. The petitioners No.1 and 2 are impleaded as the legal representatives of late Sh. Ramakant Sharma. Needless to add that their impleadment does not mean that the said petitioners No.1 and 2 can claim a right to being partners in the firm R.Kant and Co. based in this order. The petition is disposed of.


JAYANT NATH, J

SEPTEMBER 29, 2016
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