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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 81/2016

P P SINGH & ANR

..... Petitioners

Through Mr.Chandra Shekhar, Advocate.

versus

M/S VINTAGE SHIPPING PVT LTD & ANR

..... Respondents

Through Mr.S.B.Tripathi, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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23.05.2016

C.M. No.19685/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

C.R.P. 81/2016 & C.M. No.19684/2016 (stay)

Order impugned before this Court is the order dated 06.4.2016 vide which the application filed by the petitioner seeking impleadment under Order XXII Rule 3 of the CPC had been dismissed.

Record shows that the suit no.150/2008 was filed by the deceased Col.Uday Pratap Singh seeking possession and mesne profits against his tenant M/s Vintage Shipping Pvt. Ltd. This suit was decreed in his favour on 19.3.2011. A First Regular Appeal was filed by the tenant against the said judgment. During the course of

pendency of the first appeal Col. Udai Pratap Singh had expired. His wife (Dr.Asha Singh) was impleaded as a legal representative. Thereafter this appeal came to be withdrawn before the First Appeal Court. The decree was thereafter sought to be executed by the legal representative of the deceased (his wife namely Dr.Asha Singh). During the course of this proceeding an application under Order XXII Rule 3 of the CPC came to be filed by the two petitioners namely P.P.Singh and Lt. Col. Abhimanyu Pratap Singh. Petitioner no.1 is the brother of the deceased and petitioner no.2 is stated to be the nephew of the deceased. Their case is based on a will. Admittedly, they are class-II heirs. They had relied upon a will of the deceased dated 25.3.2011; a probate petition qua that will which is a Testamentary Case No.95/2012 is pending. Rights of the aforementioned petitioners are yet to be established in the aforementioned probate petition.

The Trial Court has noted the facts in the correct perspective. Trial Court had noted that petitioner nos.1 and 2 are class-II heirs. Wife of the deceased (who is class-I heir) has been impleaded as the legal heir of the deceased. The present application filed before the Executing Court is not maintainable till the right as asserted by the petitioners was established in the probate petition.

This petition is without any merit, at this stage, it is dismissed with cost of Rs.10,000/-

INDERMEET KAUR, J

MAY 23, 2016

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