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

+ CM(M) 714/2016

SUDHIR CHANDRA

..... Petitioner

Through Mr. Neeraj Malhotra and Mr. Rupal
Luthra, Advocates.

versus

COL DINESH CHANDRA (SINCE DECEASED)

THR LRS & ORS

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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04.08.2016

CM No. 26514/2016 & 26516/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 714/2016 and CM Nos. 26513/2016 & 26515/2016

1. The present petition is filed seeking to impugn the order dated 02.05.2016 passed by the trial court. By the said impugned, the application of the petitioner under Order 22 Rule 4 CPC was not allowed as had been sought.

2. The petitioner has filed a suit for declaration, cancellation of documents, damages, possession and injunction with regard to the property bearing No. F-75, Preet Vihar, New Delhi-110092. It is the contention of the petitioner in the suit that he is the owner of the suit property and that defendant No.1/his father had resorted to forgery and fabrication of documents and had affected sale deed of the property in his favour on 15.04.1994.

3. Defendant No.1/father, namely, Col. Dinesh Chandra expired on 06.03.2013 leaving behind his children inasmuch as his wife had already predeceased him. The petitioner is one of the sons of the deceased defendant No.1 and respondent No.2 is one of the daughters of the deceased defendant No.1.

4. By the present application under Order 22 Rule 4 CPC, the petitioner sought to implead all the Class-I heirs of late Col. Dinesh Chandra.

5. Respondent No.2 resisted the application stating that her late father, namely, Col. Dinesh Chandra had executed a registered Will dated 21.07.2012 in her favour and that the right to sue does not survive in favour of the other legal heirs and that she is already on record and hence, the present application is not maintainable.

6. The trial court relying upon the judgment in the case of ***Kalu Ram vs. Charan Singh & Anr., AIR 1994 Raj. 31*** held that since the deceased defendant No.1 left behind a Will dated 21.07.2012 in favour of the respondent, the right to sue survives only in her favour and not in favour of other legal heirs. Hence, the application under Order 22 Rule 4 was allowed only to the extent that Ms.Anita Chandra/respondent No.2 was brought on record as a legal heir of the deceased defendant No.1.

7. Learned counsel appearing for the petitioner has relied upon the judgment in the case of ***Shivraj Krishan Gupta & Ors. vs. Chander Krishan Gupta & Ors., 2007 (96) DRJ 466*** to contend that in case the Will is disputed, there will be rival claims and all the LRs have to be impleaded and brought on record. He submits the Will is not probated and the petitioner does not accept the same. Yet the trial court has accepted the Will while passing the impugned order.

8. This court in the case of *Shivraj Krishan Gupta & Ors. vs. Chander Krishan Gupta & Ors.(supra)* held as follows:-

“9. In S. Charanjit Singh and Anr. v. Bharatinder Singh and Ors., AIR 1988 Punjab & Haryana 123 it was held that where there are rival claims, one based on Will of a deceased defendant and another on natural succession, proper course is to implead both claimants. The Punjab and Haryana High Court also placed reliance on another full bench case reported in **Mohinder Kaur v.Piara Singh, AIR 1981 Punjab & Haryana 130** where it was held that in view of this, proper course to follow is to bring all the legal representatives on record so that they vouchsafe the estate of the deceased for ultimate benefit of the real legal representatives.”

9. An advance copy of the present petition was served on the counsel appearing for respondent No.2, but none has appeared for the said respondent.

10. In view of the legal position and the fact that the issue of the Will allegedly executed by late Col. Dinesh Chandra is a disputed one, it cannot be said that the right to sue survives only in favour of respondent No.2. Accordingly, the present impugned order dated 02.05.2016 is set aside. The matter is remanded back to the trial court to consider the application under Order 22 Rule 4 CPC afresh in accordance with law.

11. The present petition is disposed of.

12. All pending applications also stand disposed of.

JAYANT NATH, J

AUGUST 04, 2016/rb