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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1234/2012 & CM. Nos.19114/2014, 19115/2012

SUBEY SINGH

..... Petitioner

Through Mr.Anil Mittal, Advocate.

versus

UOI AND ORS

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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03.03.2016

Order impugned before this Court is the order dated 12.9.2012 vide which two applications had been decided by the Trial Court. The first was an application under Order XXII Rule 3 of the CPC and the second was an application under Order I Rule 10 of the CPC.

None has appeared for the respondent. Although written submissions have been filed by the respective parties.

These proceedings had arisen out of a claim for compensation which had been filed by Sube Singh (since deceased) against the Government. During the course of those proceedings, Sube Singh had died. An application under Order XXII Rule 3 of the CPC had been filed by Vinod Kumar and others seeking impleadment as legal representatives. The corresponding application under Order I Rule 10 of the CPC had been filed by Anil Kumar (grandson of Sube Singh)

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and Vinod Kumar (son of Sube Singh). The application filed under Order XXII Rule 3 of the CPC sought impleadment as legal representatives of ten persons; of whom one was his wife, five were his daughters and one was his son, and three were his grandsons. This application had been dismissed. The corresponding application filed by Anil Kumar (grandson) and Vinod Kumar (son) seeking impleadment in the pending proceedings was allowed.

Parties had led evidence. On the basis of the evidence, the Trial Court was of the view that the Will executed by Sube Singh on 18.01.2003 was a validly executed Will. The attesting witness has come into witness box to prove the valid execution of the Will of Sube Singh. This finding is not in challenge.

The grievance of the petitioner before this Court is that a finding had been returned by the Trial Court qua the submission made by the petitioner that the claim of compensation which was sought by Sube Singh arose out of ancestral property. Submission being that the question whether it was an ancestral property or not was not an issue before the Court and the Court could not, while deciding the applications under Order XXII Rule 3 of the CPC and the application under Order I Rule 10 of the CPC, could not have gone into this submission as to whether the claim for which Sube Singh had filed claim compensation was an ancestral property or not.

This submission of the learned counsel for the petitioner is noted. The legal proposition on this aspect highlighted by the learned counsel for the petitioner also appears to be correct. This petition is

accordingly disposed of with a finding that while dealing with the limited issue on the application under Order XXII Rule 3 of the CPC or the application under Order I Rule 10 of the CPC such a finding could not have been returned; the question as to whether the property acquired by Sube Singh was an ancestral property or not is kept open to be decided by the Trial Court.

With these directions petition disposed of.

INDERMEET KAUR, J

MARCH 03, 2016

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