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

+ CM(M) 365/2015 & CM No.7784/2015

SHAFIQUDDIN THROUGH LRS Petitioner

Through Mr.Amit Sharma and Mr.Dipesh
Sinha, Advocates

versus

KASTURI LAL(SINCE DECEASED) THROUGH LRS..Respondent

Through Mr.Rajat Aneja and Ms.Chandrika
Gupta, Advocates for R-3, 5 and 6

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

01.12.2016

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1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 9.10.2014. The petitioner had filed a suit for possession and damages against Shri Kasturi Lal Uppal. Though the exact date of death of Shri Kasturi Lal Uppal is not available, he is stated to have died almost at the end of the trial so much so that his evidence has also been recorded by the trial court. On his death respondents were impleaded as Legal Representatives. On 11.2.2010 the trial court passed a decree of possession in favour of the petitioner in respect of the property. The petitioner was also entitled to recover damages from the defendants @ Rs.750/- per month from 2.4.1990 to the date of filing of the suit and pendent lite and future damages @ Rs.750/- per month till delivery of vacant and peaceful physical possession. The petitioner has received possession of the suit property in Execution Proceedings.

2. The trial court by the impugned order in the Execution proceedings has held that in view of section 50 and 52 CPC the decree for damages can be executed only against the estate of the deceased defendant i.e. Shri Kasturi Lal and not against the individual or personal property of the objector.

3. Learned counsel appearing for the petitioner has argued that the respondents who are legal representatives of Shri Kasturi Lal Uppal and were also occupying the suit premises alongwith Shri Kasturi Lal Uppal.

4. Section 52 of CPC reads as follows:-

“52. Enforcement of decree against legal representative.-

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment debtor and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally.”

5. Hence, keeping in view the aforesaid provisions, the trial court has rightly held that the petitioners are entitled to recover from the estate of deceased Kasturi Lal Uppal merely because the respondents were residing with Shri Kasturi Lal Uppal and were dependent upon Shri Kasturi Lal for their accommodation does not change the position. The respondents were not impleaded in their personal capacity in the suit. There are no reasons to

interfere in the impugned order. Accordingly, present petition is dismissed.
All pending applications, if any, also stand dismissed.

JAYANT NATH, J

DECEMBER 01, 2016/n