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

+ C.R.P. 184/2016 & CM No.41925/2016

BALVINDER SINGH Petitioner
Through Mr.P.P.Ahuja, Advocate

versus

CHANDER PRABHA AND ORS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **11.11.2016**

1. By the present petition under Article 115 of CPC the petitioner seeks to impugn the order dated 15.9.2016 by which the application filed by respondent No.1 under Order 22 Rule 4 CPC was allowed. The respondent No.1 has filed the suit for possession against the petitioner and his father Shri Kartar Singh Nagpal. Respondent No.1 claims to be the owner of the suit property and also claims that the petitioner and late Shri Kartar Singh Nagpal illegally physically occupied the property. The suit was filed for possession and recovery of mesne profits.

2. The father of the petitioner Shri Kartar Singh Nagpal expired. The trial court by the impugned order on the application under Order 22 Rule 4 CPC filed by respondent No.1 held that for the purpose of adjudication of the said application, the court is not concerned with the merits of the case. The only thing to be seen is whether right to sue survives or not. As the suit is for possession, the trial court held that the right to sue survives and the

LRs of deceased Shri Kartar Singh Nagpal were impleaded as defendants to the present suit.

3. Learned counsel appearing for the petitioner has submitted that as per the written statement filed by him the property in question was purchased by the petitioner and the petitioner is the absolute owner of the suit property. He submits that Late Shri Kartar Singh Nagpal had no title to the property and was not even residing in the property. He further submits that in the light of the above, the only LR of Shri Kartar Singh Nagpal for the purpose of the present suit would be the petitioner. He submits that the other children of Late Shri Kartar Singh Nagpal cannot be said to be Legal Representative as they have no interest in the suit property. He further submits that the said other LRs of Late Shri Kartar Singh Nagpal have actually entered into connivance with respondent No.1 and are now trying to harass the petitioner. He further submits that under Order 22 Rule 5 CPC, the court was obliged to hold an enquiry to determine whether a person is the legal representative of the deceased party or not. He submits that no such enquiry was carried out by the impugned order.

4. As far as the submission of learned counsel for the petitioner about Order 22 Rule 5 CPC is concerned, it is no doubt true that the said provision provides that where question arises as to whether any person is or is not a legal representative of a deceased party, the question has to be determined by the Court. However, a perusal of the impugned order would show that the court has determined the said issue and has come to a conclusion that the other Legal Representatives of the deceased Shri Kartar Singh Nagpal would also be liable to be impleaded as LRs.

5. Section 2(11) CPC reads as follows:-

“2.Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

.....

(11) “legal representative” means ‘a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and Where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;.”

6. The term ‘Legal Representative’ is defined in The Code of Civil Procedure, Sir Dinshah Fardunji Mulla (18th Edition) 2011 as follows:

“12... The definition of ‘legal representative’ is inclusive in character and its scope is wide. It is not confined to legal heirs only. It stipulates a person who may, or may not be an heir if he is competent to inherit the property of the deceased, but he should represent the estate of the deceased person. It includes heirs, those in possession bona fide, without there being any fraud or collusion and are also entitled to represent the estate.”

7. In light of the above definition, it is implicit that no detailed inquiry is to be conducted regarding the title and claim of the respondent to come to a conclusion as to who are the LRs of the deceased Shri Kartar Singh Nagpal. The other brothers and sisters of the petitioner who also represent the estate of the deceased person would qualify to be legal Representatives. Mere impleading of the said LRs does not in any manner affect the stand taken by the petitioner in his written statement and his claims on the property as stated by him. The present petition is without merit and is accordingly dismissed. All applications also stand dismissed.

JAYANT NATH, J

NOVEMBER 11, 2016/n