

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

+ **FAO No.274/2011**

% **26th April, 2017**

SH. RAVI NAYYAR Appellant

Through: Mr. D.S. Rustagi, Advocate
with Mr. Apporva Rustagi,
Advocate.

versus

SH. ATAM PRAKASH & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this revision petition under Section 115 of the Code of Civil Procedure, 1908 (CPC), the appellant Sh. Ravi Nayyar, the legal heir of the original plaintiff Smt. Ram Piyari, impugns the order dated 19.11.2010 passed by the trial court. By the impugned order, the trial court has dismissed the application under Order XXII Rule 3(2) CPC to bring on record the appellant as a legal heir of the deceased plaintiff Smt. Ram Piyari.

2. The deceased plaintiff Smt. Ram Piyari filed the subject suit for declaration and for cancellation of the sale deed dated 12.10.1971 executed by the defendant no.1 in the suit as an attorney of

his deceased father Sh. Gian Chand. This suit was at the stage of plaintiff's evidence, as informed to this Court by the counsel for the appellant, when the plaintiff Smt. Ram Piyari expired. Smt. Ram Piyari expired on 11.12.2007. Hence the present appellant moved the application for substituting himself as the legal heir of the deceased plaintiff Smt. Ram Piyari who was an issueless widow and since Smt. Ram Piyari had left a registered Will dated 19.4.1999 in favour of the appellant/applicant.

3. The trial court by the impugned order has dismissed the application on the ground that it is filed after a period of two years of the death of the plaintiff i.e much beyond the period of limitation. Trial court has also observed that the appellant/applicant had not filed even the photocopy of the Will dated 19.4.1999 before the trial court. Trial court disbelieved the case of the appellant/applicant that he was unaware of the proceedings and hence could not file the application. Trial court has also observed that no explanation has been given as to why the previous counsel for the deceased Smt. Ram Piyari did not take steps to implead her legal heirs since 2007.

4. I may note that the appellant/applicant has filed in this Court copy of the registered Will executed by the deceased Smt. Ram Piyari in favour of the appellant/applicant. This is a registered Will,

and therefore, the observation of the trial court that there is no Will on record would stand satisfied on account of filing of copy of this registered Will of Smt. Ram Piyari dated 19.4.1999 in this Court. The observations of the trial court that the application is delayed is undoubtedly a matter of fact, however, the Court had to see the reasons given for condonation of delay. Reasons given by the appellant/applicant was that he was unaware of the present case. There is no reason to disbelieve this case of the appellant/applicant inasmuch as the deceased was an issueless widow and it is not necessary that everything and every matter of the deceased plaintiff would be known to the appellant/applicant. Appellant/applicant has rightly stated that only when he received a registered letter from the Advocate of the deceased plaintiff only in October, 2009 that he came to know about the subject suit and thereafter the present application was filed on 15.10.2009 i.e within seven days.

5. In my opinion, therefore there are sufficient reasons for condonation of delay because the present is a case where there are no natural legal heirs but the legal heir who is a relative of the deceased is a legal heir on account of the registered Will. Also, the trial court was unjustified in observing that the earlier counsel could have filed an application to bring on record the legal heirs because not only counsel

did not have duty to file an application for impleading the legal heirs unless so instructed by the litigant but also that an application could only be moved if the Advocate would have known that the present appellant/applicant is the sole legal heir of the deceased plaintiff in terms of the registered Will dated 19.4.1999 and which is not the finding of the trial court.

6. In view of the above, this revision petition is allowed. Impugned order dated 19.11.2010 is set aside. Delay in filing of the application under Order XXII Rule 3(2) CPC is condoned and the appellant/applicant is substituted as a legal heir of the deceased plaintiff Smt. Ram Piyari.

7. Let the appellant appear before the District & Sessions Judge (Central), Tis Hazari Courts, Delhi on 23rd May, 2017 and the District & Sessions Judge will mark the suit for disposal to a competent court in accordance with law. The trial court before proceeding further will issue notice to the defendants in the suit as also any additional defendant which the appellant may like to implead as defendants in the suit. Registry will ensure that trial court record in this case is made available to the concerned District & Sessions Judge on the date fixed.

APRIL 26, 2017/ Ne

VALMIKI J. MEHTA, J