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

+ CM(M) 938/2016 & CM Nos.33468 & 33470/2016

RASHMI TAGORE & ORS Petitioners
Through Mr.Deepak Arora, Advocate

versus

VIPIN KUMAR GUPTA & ANR Respondents
Through Mr.Sandeep Khatri, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **18.01.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 18.01.2016 by which an application filed under Order 22 Rule 3 CPC was dismissed.
2. The suit is filed by late Sh.Pawan Kumar Gupta alongwith respondent Nos.1 and 2 against respondent No.3 for mandatory and permanent injunction regarding property bearing No.C-1/89, Janak Puri, New Delhi-110 058. It may be noted that late Sh.Pawan Kumar Gupta is the father of respondent Nos.1 and 2. He died on 15.11.2014. The petitioners who are the daughters of late Sh.Pawan Kumar Gupta who are not impleaded as party to the suit filed the present application under Order 22 Rule 3 CPC seeking their impleadment as LRs of late Sh.Pawan Kumar Gupta.
3. The trial court noted that the suit is for injunction. As late Sh.Pawan Kumar Gupta executed a gift deed in respect of the suit property in favour of respondent Nos.1 and 2, no right subsisted in favour of other children of the

deceased. Accordingly, the application filed by the petitioners was dismissed. Another application filed by respondent Nos.1 and 2 was accepted and respondent Nos.1 and 2 were held to be entitled to prosecute the suit further.

4. None has appeared for respondent Nos.1 and 2 today though they have been served.

5. Legal representative is defined under Section 2(11) of the CPC as follows:

“(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’ Sir Dinshah Fardunji Mulla (18th Edition) 2011 states 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. Reference in this regard may be had to the judgment of Punjab & Haryana High Court in ***Jasbir Singh and Anr. Vs. Guru Nanak Public School Trust and Ors. MANU/PH/1406/2008*** wherein it was held as follows:-

“32. A perusal of Section 2(11) above reveals that Legal Representative is a person who in law represents the estate of a

deceased person and includes any person who intermeddle with the estate of the deceased or where a party sues or is sued in representative capacity and the person on whom the estate devolves on the death of the party so sues or sued.....”

8. In the light of the above definition, the petitioners are one of the persons to represent the said deceased person. Hence, they are also entitled to be impleaded as legal representatives of late Sh.Pawan Kumar Gupta.
9. The impugned order suffers from material irregularity and is accordingly quashed. The application of the petitioners under Order 22 Rule 3 CPC is accordingly allowed.
10. The petition stands disposed of. All the pending applications, if any, stand disposed of.

JAYANT NATH, J.

JANUARY 18, 2017/v