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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 163/2017 and CM APPL.5351/2017
BRAHAM SINGH (DECEASED) THR LRS Petitioners
Through: Mr. Vipoin K. Singh, Advocate

versus
BRAHAM PAL @ BIRMI & ORS. Respondents
Through: Mr. Sameer Abhyanak, Advocate with
Mr. Amish Tandan, Adv. & Mr. Swapnil
Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **19.03.2018**

Braham Singh, the predecessor-in-interest of the petitioners had instituted the civil suit (CS No.4483/2015) seeking relief of injunction against the respondents so as to restrain them permanently from interfering in his peaceful possession over the subject plot of land, he having pleaded that he was the owner in possession thereof. The suit was contested by the respondents by their written statement and as per the proceedings recorded on 02.08.2014, it was put to trial, on the basis of issues framed, the prime issue being *as to whether the plaintiff was in possession of the subject property.*

During the course of trial, the original plaintiff died, leading an application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 (CPC) being submitted by the petitioners. The said application was contested. It was disallowed and at the same time, the claim was rejected by the administrative civil Judge by order dated 12.01.2017, *inter alia*, holding

the cause of action would not survive, the relief claimed by the original plaintiff being “*in personam*”. It is the said order which is challenged by the petition at hand.

Having heard the learned counsel on both sides and having gone through the record, this Court finds substance in the grievance of the petitioners. To say the least, the approach to the issue by the civil Judge was wholly misdirected. Given the averments in the plaint, which primarily need to be considered, the plaintiff had claimed ownership and possession of the said land. In normal course, the estate would devolve on the petitioners after his death, and, therefore, the right to sue would survive. The application under Order XXII Rule 3 CPC, thus, could not and should not have been declined in the manner done, not the least, it leading to rejection of the plaint.

The petition is allowed. The impugned order is set aside. The prayer under Order XXII Rule 3 CPC of the petitioners’ stands granted. They stand substituted in place of deceased Braham Singh in the suit, the proceedings arising wherefrom stand consequently revived on the file of the civil Judge.

The defendants/respondents, however, have the liberty to bring suitable amendments, if they are so advised, to raise all such additional contentions as may be available to them under the law to question the right, title or interest of the substituted plaintiffs.

The parties shall appear before the civil Judge on 11th April, 2018.

The petition and the application stands disposed of in above terms.

R.K.GAUBA, J.

MARCH 19, 2018/vk

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