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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 25/2016 and CM 5713/2016 and 14751-14752/2017

GULSHAN KUMAR JAIN

..... Petitioner

Through: Mr. Ravi Dev Sharma and Mr. Pardeep
Chaudhary, Advocate

versus

RAJEEV JAIN & ORS

..... Respondents

Through: Mr. Rohit Priya Ranjan and Ms. Shweta
Sharma, Advocates for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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21.02.2018

The learned counsel for the petitioner submits that the petitioner has died on 31.12.2017 and that he is in the process of moving an appropriate application before the trial court under Order XXII Rule 3 CPC.

After some hearing, the counsel for the petitioner submits that he may be allowed to withdraw the petition and the applications filed therewith and instead seeks liberty to approach the trial court by review application in as much as the contentions with regard to the claim of the defendants as to their right, title or interest in the subject property *benami* has not even been considered and the order passed does not deal with all the relevant documents.

The trial court record was called for in the context of the present review petition. It is noted that by an earlier order dated 22.07.2015 issues were framed, they reading as under :-

- “1. Whether the plaintiff is entitled to the decree of mandatory injunction as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the decree of damages as prayed for? OPP*
- 3. Whether the suit filed by the plaintiff has not been properly valued and the requisite court fees thereupon has not been paid? OPD*
- 4. Relief.”*

The above is hardly the manner of framing issues. It appears that the trial judge has gone by the prayer clauses to frame the issues. The issues as framed do not capture the area of controversy or the material propositions on fact or law which arise.

Thus, while the petition and the applications filed therewith are dismissed as withdrawn with liberty as prayed granted, it is directed that the learned trial judge while considering the prayer made in the application of the petitioner under Order XII Rule 6 CPC by review will also apply its mind and reconsider / recast appropriately the issues in accordance with the law.

R.K.GAUBA, J

FEBRUARY 21, 2018

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