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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th January, 2018

+ CM(M) 384/2015 and CM APPL.7977/2015 (stay)

**MAHANT P. L. MANGAL DASS ALIAS PIARE LAL
(DECEASED THR HIS LEGAL HEIRS) Petitioners**

Through: Mr. Rajat Aneja, Advocate with
Ms. Chandrika Gupta, Advocate

versus

RAVI KUMAR JUNEJA & ORS. Respondents

Through: Mr. O.P. Jatav, Advocate

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

ORDER (ORAL)

1. A Civil Suit (CS No.30/10/90) was instituted by the predecessor-in-interest of the petitioners seeking relief of permanent injunction against interference in his possession over the premises which he described as *Shri Katas Raj Dham Ashram*, Raghubir Nagar, Tagore Garden Extension, New Delhi. Pertinent to note here that the said plaintiff had pleaded, *inter alia*, that he was *mahant*, founder and trustee of the said *ashram* having constructed and built the super-structure in question. He described the respondents, who were impleaded as defendants as local residents who were trying to forcibly

dispossess him in order to construct shops and make wrongful gain therefrom.

2. The suit was resisted by the respondents by written statement, *inter alia*, taking the plea that the plaintiff did not own the property and had no right, title or interest therein, it having been unauthorizedly built over the government land.

3. The suit was at the stage of trial, statedly almost at the fag end, when the original plaintiff died on 09.09.2009. An application in terms of requirements of Order XXII Rule 1 & 2 of the Code of Civil Procedure, 1908 (CPC) was presented by the petitioners, admittedly belatedly, on 17.09.2010. The said application was dismissed by the Civil Judge by order dated 31.05.2011 primarily on the basis of observations that the delay had not been properly explained. The petitioners thereafter moved an application for review submitting some further documents to explain the delay.

4. The said prayer was also rejected by order dated 01.12.2014. The petition at hand seeks to assail both the aforesaid orders.

5. Having heard the counsel on both sides and having gone through the record, this court is of the view that it will be unfair to non-suit the petitioners only because there was delay in moving the application for substitution. The additional material submitted at the time of review had explained the delay sufficiently. The daughter-in-law of the plaintiff had died and the widow of the original plaintiff had

suffered a fracture in May-June, 2010 which undoubtedly would have shifted the focus of the family to the urgent medical needs.

6. In the above facts and circumstances, the delay is condoned. The question as to whether the original plaintiff had personal interest in the subject property, that is to say as to whether he had invested from his own resources to build the super-structure in question would need to be addressed at the time of final adjudication. From averments to such effect, *prima facie*, it can be recorded that the cause of action has survived.

7. Thus, the impugned orders are set aside. The prayer for substitution is allowed. Petitioners shall stand impleaded in place of the original plaintiff (since deceased) and held entitled to prosecute it further. The proceedings in the suit, thus, stand revived on the file of the Civil Judge.

8. The parties shall appear before the concerned court for further proceedings on 28th February, 2018.

9. The petition and the application filed therewith are disposed of with these observations.

R.K.GAUBA, J.

JANUARY 30, 2018

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