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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 890/2018 & CM APPL. 31370-31371/2018**

ANILA DASGUPTA (DECEASED) THR LRS Petitioner
Through: Mr.S.K.Bahduri and Mr.Prem
Prakash, Advocates

versus

MAYA BHATTACHARJEE BAHTTACHARJEE (DECEASED)
THR LRS & ANR Respondents
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **07.08.2018**

CM No.31370/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

CM(M) 890/2018 and CM No.31371/2018

Submissions have been made on behalf of the petitioner assailing the impugned order dated 15th March, 2018, of the learned Trial Court, vide which an application under Order XXII Rule 10 read with Order I rule 10 of the CPC filed by Smt.Sawitri Jain, seeking to be arrayed on record as defendant No.2 to CS SCJ No. 7841/2016 was allowed and as a consequence thereof the said Smt. Sawitri Jain, who claimed herself to have been bequeathed the property, in CS SCJ No. 7841/16 was allowed to be arrayed on record.

The suit was filed by the plaintiff by one Smt. Maya Bhattacharjee now represented by her legal heirs against Anila Dasgupta also now represented by the legal representatives, who are the present petitioners, which was instituted seeking a specific performance and injunction against Anila Dasgupta seeking a specific performance of an agreement to sell in relation to a property No. J-1840, Chitaranjan Park, Kalkaji.

During the pendency of the said suit, which is still indicated to be pending, IA No. 4176/97 filed by the plaintiff of the said suit Maya Bhattacharjee seeking to bring on record the two legal representatives of the deceased Anila Dasgupta to bring on record the legal representatives of the defendant i.e. Anila Dasgupta who was stated to have expired on 9.2.97 vide order dated 29.4.2002 of this Court, the application filed by was allowed and the two legal representatives of the deceased defendant were allowed to be brought on record observing categorically to the effect:

“I have heard learned counsel for the parties without going into the merits of the afore-noted stand of the parties at this stage, lest it may prejudice their respective stands in the trial, I am of the view that the legal representatives of the deceased defendant are necessary parties to the suit. The present application having been filed on 7th May 1997 is within limitation.

Accordingly, the application is allowed and the two legal representatives of the deceased defendant, mentioned in the application are brought on record. Let the amended memo of parties' names be filed within a week.”

which is a reference to the observations made in the preceding para of the

very same application

“The application is resisted by the proposed legal representatives mainly on the ground that the deceased had left behind a Will; bequeathing the suit property in favour of one Smt. Sawitri Jain, w/o Shri M.K.Jain, and she having died, leaving a testamentary documents, the present application of substitution of the defendant is not maintainable. It is also pleaded that the application is barred by limitation. In the rejoinder-affidavit, filed on behalf of the plaintiff-applicant, it is stated that on 20 December, 1994, the deceased, through Mr.M.K.Jain as her attorney had sworn an affidavit stating that she had entered into an agreement to sell the suit property on 19 November 1987 and had also received some consideration for the same from Mrs. Sawitri Jain and, therefore, the question of Will, as pleaded, did not arise.”

which is a reference to the submissions that have been made on behalf of the legal heirs of the deceased Smt. Anila Dasgupta arrayed on record as the defendant to the suit now represented by the present petitioners who apparently succeeded to the rights of the said Anila Dasgupta and also all liabilities, to the effect that the said application had been received by the proposed legal representatives of the deceased Anila Dasgupta, i.e., the predecessor in interest of the present petitioners mainly on the ground that the deceased had left behind a Will bequeathing the property in favour of Sawitri Jain w/o Mr.M.K. Jain, and she having died, leaving a testamentary document, the application for substitution of defendants was not maintainable contending also that the application was barred by limitation. In the rejoinder it had been stated on 20.12.1994, that the deceased through M.K.Jain had entered into an agreement to sell the suit property on

19.11.1987 and had also received a compensation and therefore the question of Will, as pleaded, does not arise. In this context it has specifically been observed vide the order dated 29.4.2002 of this Court in this suit that without going into the merits or demerits of the said suit, lest it may prejudice the respective stands in the trial, this Court was of the view that the legal representatives of the deceased are necessary parties to the suit and thus the legal representatives of the deceased defendants were brought on record as a party to the suit.

Vide the impugned order, the learned Trial Court has taken the said aspect into account and categorically observed to the effect that Section 11 does not apply to Sawitri Jain as she had not sought to be impleaded as a party as was directed vide order dated 29.4.2002. It has also been observed vide the impugned order that on the consideration of the merits of the application there have been certain developments in the case since filing of the suit which creates suspicion that the deceased defendant might have switched sides with the plaintiff after filing of the suit and thus the possibility of collusion between the existing parties could not be ruled out and taking all the said aspects into consideration Sawitri Jain was allowed to be impleaded as defendant No.2 to the suit.

During the course of submissions made on behalf of the present petitioner, reliance has *inter alia* been placed on the proceedings vide order dated 5.10.2016 of this Court whereby the prayer made by the plaintiff represented by the legal representatives through an application under Order 1 Rule 10 of the CPC seeking to implead Land & Development Officer, Ministry of Urban Development, as a defendant had been dismissed. The said order dated 5.10.2016 is in the context of the L&DO having been

granted permission to the respondents to the proceedings who were the legal representatives of the original owner of the suit property to effect the sale of a property to a third party and it was thus observed to the effect that the same could not be a ground to implead the said Land & Development Officer in any manner, and that the grant of permission by the L&DO did not in any manner dilute the stand of the petitioner, i.e., there exists an oral agreement to sell between him and the original owner of the property and the original owner/LRs are in default of the agreement to sell etc.

Apparently on a consideration of the submissions made and on a perusal of the record placed before this Court, there is no infirmity in the impugned order. The petition and the accompanying applications are declined.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

AUGUST 07, 2018/sv