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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 763/2019**
PRAKASH NANDAN GUPTA

..... Petitioner

Through : Mr.Ratnesh Tiwari, Advocate.

versus

RAGHU NANDAN GUPTA (DECEASED) THR LRS & ORS

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **15.05.2019**

CM APPL.No.23242/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 763/2019, CM APPL.No. 23241/2019

Petitioner / plaintiff had filed an application dated 08.05.2018 under Order VI Rule 17 CPC for amending the plaint.

The learned counsel for the petitioner alleged he had filed a suit against his late father and his brothers for partition on the ground the subject properties are ancestral properties and he has a share in it. It is admitted the written statements were filed by the respondents wherein their case was the properties are 'self acquired' properties of their deceased father / defendant No.1. The father has since expired and the plaintiff now intends to amend the plaint saying the properties left by the father are 'self acquired' and the petitioner has a share therein.

These facts, he was aware on the filing of written statement(s) by the respondents way back in the year 2009 and despite the objections being taken in the written statement he never came forward to amend his plaint, and now after the death of his father he seeks to amend his plaint to say the properties are 'self acquired' as stated in his application dated 08.05.2018 and such application was rightly rejected by the learned Trial Court as an application under Order XXII Rule 4 CPC would only have sufficed the purpose. Even otherwise, the evidence of the petitioner has already been recorded and the application under Order XXII Rule 4 CPC has since been allowed. The cause of action does not change merely on the death of the one of the parties to the suit. Thus, there is no illegality in the impugned order passed by the learned Trial Court. The petition being devoid of merits is dismissed. The pending application, if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

MAY 15, 2019

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