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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 211/2019 & CM APPL. 42663-42665/2019
DAVINDER KUMAR BATRA & ORS Petitioners
Through Mr. P.P. Ahuja, Advocate

versus

KRISHAN CHAND BATRA (DECEASED)
THR LRS Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
% **23.09.2019**

1. Petitioners impugn order dated 28.01.2019 whereby an application under Order 22 Rule 3 CPC has been allowed and legal heirs of the deceased plaintiff have been brought on record.
2. Learned counsel for the petitioner submits that the suit itself is highly barred by limitation as it challenges documents which were executed in the year 1972 and has been pending since the year 2011.
3. Learned counsel for the petitioner further submits that the trial court has committed an error in impleading all the three legal heirs of the deceased plaintiff i.e. his wife, one son and one daughter. Learned counsel submits that when the application was allowed, the wife of the original plaintiff had already expired in the year 2015 and the factum of her death had been brought on record by way of another application

under Section 151 CPC filed on 20.12.2015 and without noticing the same, the trial court has allowed the application bringing on record all the three legal heirs. Learned counsel further submits that even in the amended memo of parties filed by the respondent, only two legal heirs have been mentioned.

4. Learned counsel further submits that since the only two of the legal heirs have been shown in the memo of parties, the error in the order needs to be corrected and further prays that direction be issued to the trial court to decide the application under Order 7 Rule 11 CPC filed by the petitioner.

5. Keeping in view of the fact that the order clearly is erroneous to the effect that it directs impleadment of Smt. Bhagywanti Batra who had already expired on 26.09.2015 and further that the respondent themselves have only filed an amended memo of parties impleading the son and daughter, the order is corrected to the effect that the same would read as impleading legal heirs no. 2 and 3 as mentioned in the original application under Order 22 Rule 3 CPC.

6. Since this is a clear error apparent and no order adverse to the respondents is being passed, no notice has been directed to be issued to the respondent.

7. However, the trial court is directed to expedite the proceedings and to hear arguments on the application of the petitioner under Order 7 Rule 11 CPC expeditiously preferably on the next date of hearing i.e. 02.12.2019.

8. In view of the above directions, learned counsel for the petitioner seeks leave to withdraw the petition.

9. The petition is accordingly dismissed as withdrawn with the aforesaid directions.

10. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 23, 2019

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