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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 11<sup>th</sup> October, 2019*

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**CM (M) 682/2015**

**KRISHAN KUMAR SAINI (SINCE DECEASED AND NOW  
REPRESENTED BY HIS LRS)**

..... Petitioner

Through: Md. Z. Rahaman, Advocate with Mr.  
Bhupinder Singh Saini, Advocate (M-  
9831094619)

Mr. Vinay Kumar Saini, P-1 present  
in person (M-9818715408)

Petitioner No.3 present in person (M-  
8447085738)

versus

**RAJINDER KUMAR SAINI (SINCE DECEASED AND NOW  
REPRESENTED BY HIS LRS) & ORS**

..... Respondents

Through: Mr. Rajiv Dewan & Mr. Angad  
Singh, Advocates (M-9811673338)  
Mr. Kuldeep Saini, LR of R-2 (M-  
9868940168)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

**CM(M) 682/2015 & CM APPLs. 13103/2015, 4768/2017, 54010/2018**

1. The present petition arises out of a suit for partition between the legal heirs of Late. Shri Som Nath Saini. The suit was filed by Shri Krishan Kumar Saini (Plaintiff) against his two brothers, namely, Sh. Rajinder Kumar Saini and Sh. Surinder Kumar Saini (Defendants No.1 and 2) and Smt. Krishna Kumari (Defendant No.3). The prayer in the suit was for a decree for partition in respect of property bearing no. A-70, NDSE, Part-II, New Delhi. The suit was filed on 10<sup>th</sup> March, 1987. Defendant No. 1- Sh.

Rajinder Kumar Saini had filed a written statement. Defendant No. 2- Sh. Surinder Kumar Saini had also filed a written statement. However, during the pendency of the suit, both the brothers have passed away and are represented by their legal heirs.

2. The question has arisen as to the legal heirs of Mr. Rajinder Kumar Saini, who passed away on 26<sup>th</sup> May, 2001. One Ms. Premshila and Mr. Achal Kumar (hereinafter, “Applicants”) filed application under Order XXII Rule 4 seeking impleadment on the ground that they are the wife and son of Late Mr. Rajinder Kumar Saini. The Plaintiff, on the other hand, moved an application under Order XXII Rule 4 CPC seeking the deletion of the name of Mr. Rajinder Kumar Saini from the memo of parties on the ground that he did not have legal heirs, as he was unmarried. The said applications came to be decided by the Trial Court by the impugned order.

3. The Trial Court has, on the basis of a summary inquiry, come to the conclusion that the Applicants deserve to be impleaded as the legal heirs of Mr. Rajinder Kumar Saini. The Trial Court has considered the affidavit-in-evidence filed by Ms. Premshila, as also certain other documents including an affidavit of the *Pandit* who allegedly performed the marriage of Mr. Rajinder Kumar Saini with Ms. Premshila and the School Leaving Certificate of Master Achal. The relevant portion of the Trial Court’s judgment is set out below:

“ ...

*It is the case of Applicant that plaintiff/Applicant Shri Krishan Kumar Saini expired in October, 2012 leaving behind his legal heirs namely Ms. Asha Saini, Shri Vinay Saini and Shri I.K. Saini in favour of application under Order 22 Rule 4 CPC.*

*The original application was moved on behalf of*

*plaintiff therein saying that they being the Class-I and Class-II legal heirs be brought on record. This application was moved by the Applicant with the averments that she is the wife of Mr. Krishan Kumar Saini, having two children.*

*In support of the facts initially inquiry was ordered to be conducted in view of the dispute of the claim of Mrs. Premsheela Saini by the plaintiff and objection of the Class-II legal heirs being brought at the instance of plaintiffs' claim that no Class-I legal heir was left behind.*

*The Applicant Ms. Premsheela Saini filed her affidavit of evidence which is EX. AW-1. The affidavit of the Pandit Shri V.D. Sharma, who performed the marriage is EX. PW-3/1. The receipt of Rs.2,600/- dated 17.06.1999 of booking charges of Sanatan Dharam, Jungpura Temple Committee for conducting marriage of Applicant with Late Shri Rajinder Kumar Saini is EX PW-1/D-1. The marriage photographs are EX. A-7/D-3. The original school leaving certificate dated 20.07.2000 of Master Achal Kumar Saini is EX. AW-2/1. The original notary affidavit dated 27.07.2000 of Shri Rajinder Kumar Saini is EX. AW-2/1. The original notary affidavit dated 27.07.2000 of Shri Rajinder Kumar Saini admitting Achal Saini to be his son is EX. PW-7/B1. The original information letter of Shri Rajinder Kumar Saini's death where the application is shown to the wife. The original school certificate dated 16.07.2001 of NBS Bal Vikas Vidyalaya, New Delhi.*

*The photographs of marriage along-with negatives are EX. (A to Z-2) & 1-36, the marriage photographs are EX. A-7/D-3. The original inland letter of Smt. Asha Saini, real sister of all plaintiffs and defendants and deceased written to the Applicant in the year 2000 dated of information of death of Shri Rajinder Kumar Saini submitted for giving information of death of Shri Rajinder Kumar Saini mentioning the Applicant Premsheela Saini to be his wife.*

*On the other hand, the plaintiff has shown LIC policy dated 28.03.1999 where the nominee is shown to be the sister namely Lilawati.*

*I have gone through the evidence available on record.*

*On the basis of two school leaving certificates duly exhibited on record of both the children of Shri Rajinder Kumar Saini which are shown to be the admission form, filled by Shri Rajinder Kumar Saini and shown him to be the fathers' name EX. AW-2/1. Affidavit is EX. AW-7/B1.*

*Such allegations that the plaintiffs who are claiming themselves to be the real brothers and sister of the defendant could not produce a single photograph of the deceased and could not identify that the person who is shown in the photograph has married with the Applicant is the Rajinder Kumar Saini or not. They have not been in a position to put any other photograph of their brother Shri Rajinder Kumar Saini to show that the person shown in the photograph is not Shri Rajinder Kumar Saini and somebody else.*

*In view of the marriage certificate and the form filled by Shri Rajinder Kumar Saini mentioning them to be his children, the Applicant has brought sufficient evidence on record to show that the Applicant was legally wedded wife of Shri Rajinder Kumar Saini at the time of his death having two children therefrom.*

*As per the Judgment of the Hon'ble Supreme Court in a long standing marriage if prima-facie proof is placed on record in the form of documentary evidence if the person is shown to be the husband and wife, the onus to prove that they were not married couple is on the others who are disputing it.*

*The evidence brought on record is sufficient to show that for the purpose of inquiry to be conducted to determine the legal heirs to pursue the remedy on behalf of the deceased has been decided by the Applicant Ms. Premsheela Saini for bringing on record but the respondent has filed to rebut by proving, giving*

*sufficient evidence on record to show that they were not actually married.*

4. After going through the evidence, the Trial Court arrives at the conclusion that at this stage, there is sufficient evidence that Ms. Premshila was the legally wedded wife of Mr. Rajinder Kumar Saini and since only *prima facie* proof is required at this stage, the inquiry is sufficient in terms of the documents that have been filed on record for determination that the two Applicants are the legal heirs. The conclusion of the Trial Court is set out below:

“ ...  
*In view of that inquiry in both, the appeal and in the application, the Applicants at the time of death of deceased Shri Rajinder Kumar Saini is ordered to be substituted in place of Shri Rajinder Kumar Saini and right to sue survives in their favour. The application filed by the plaintiff/Applicant in view of Order 22 Rule 3 CPC in which the determination of legal heirs was required to be done in time is disposed-of with the order that Applicant Mrs. Premsheela and her two children who were minor at the time of moving the application who have since turned major and elected to pursue the remedy of their own are brought on record after perusal of the evidence on record on the two applications, one moved by the plaintiff and other moved by the Applicant Mrs. Premsheela Saini. Ordered accordingly. Amended memo of parties be filed accordingly.”*

5. The said impugned order is assailed before this Court in the said petition on the ground that the Id. ADJ has committed a fundamental error in law. The Id. ADJ ought to have directed a DNA test, which was in fact allowed earlier by the Trial Court on 30<sup>th</sup> January, 2004. Without conducting a DNA test, the Trial Court could not have come to a conclusion that Ms.

Premshila and Mr. Achal are the legal heirs of Mr. Rajinder Kumar Saini. Ld. counsel appearing for the Petitioner also raises various doubts as to the authenticity and veracity of the *Pandit* who is alleged to have performed the marriage, the photographs which have been placed on record. Ld. counsel also relies upon a record of the Nagar Nigam School where Mr. Achal is shown as the son of Mr. Ravi Prakash Pandey and not Mr. Rajinder Kumar Saini. He submits that under such circumstances, the correct course of action was to direct a DNA test to be conducted and the Applicants ought to be directed to submit themselves to a DNA test.

6. On the other hand, ld. counsel appearing for the Applicants submits that at this stage, the Court is to only conduct a limited inquiry, which has been conducted in accordance with law. He relies upon the judgment of the Supreme Court in ***Jaladi Suguna (Dead) Through LRs v Satya Sai Central Trust & Ors.*** AIR 2008 SC 2866 to argue that the fact that the Applicants are held to be legal representatives does not mean that they will be entitled to a share in the property automatically. The same would be subject to adjudication at the final stage.

7. This Court has perused the original trial court record, and has seen the pleadings filed on record, as also the documents which were submitted by the Applicants. First, it needs to be noted that Mr. Rajinder Kumar Saini had filed the written statement during his lifetime opposing the relief in the present suit. In his written statement, he relies upon a Will wherein according to him, Defendants No.1 and 2 alone have the rights in the suit property.

8. The written statement is silent in respect of his personal status i.e. as to whether he was married or not. Further a perusal of the documents, which

the Applicants have placed on record also shows that an affidavit of Mr. Rajinder Kumar Saini is relied upon in support of the contention that he had got married to Ms. Premshila in the *Sanatan Dharam Mandir* in Jangpura, Bhogal.

9. A perusal of the said affidavit, which is on stamp paper shows that the affidavit is claimed to have been signed by Defendant No.1. However, the signatures on the same are in Hindi, and translate into “Rajendra Kumar Saini.” There is, therefore, a difference in “Rajinder Kumar Saini” who has signed in English in the written statement which was filed before the Court. and the affidavit which is relied upon by the Applicants. Even on the backside of the stamp paper, the name of Rajendra Kumar Saini is written on the stamp vendor’s stamp, after crossing out the name of one Mr. Pandey. A perusal of the other documents relied upon by the Applicants also shows that the legality and authenticity of these documents would have to be established during trial. The limited inquiry, which has been conducted for the purposes of impleading the same as legal heirs would not be conclusive of the fact as to whether the said two Applicants are the legal heirs of Mr. Rajinder Kumar Saini. The differences in the signatures of Mr. Rajinder Kumar Saini who had a postgraduate degree with M.A. (Economics), is stark. There is no reason why he would have signed as ‘Rajendra Kumar Saini’ – that too in Hindi, when his name in the Written statement is ‘Rajinder Kumar Saini’. Thus the veracity of the documents relied upon by the Applicants would have to be conclusively established at the trial. However, the Applicants cannot also be directed to be deleted at this stage, owing to the various documents, which they have placed on record in order to support the plea that they are the legal heirs of Mr. Rajinder Kumar Saini.

On a balance, considering that the suit is of the year 1987, the Applicants shall be retained as the Defendants No.1(a) and 1(b) in the suit. However, the said order would not be conclusive of them being the legal heirs of Mr. Rajinder Kumar Saini, the question as to whether Mr. Rajinder Kumar Saini was married, and whether Mr. Achal Kumar is his son would have to be adjudicated at the final stage. The Plaintiff and the other Defendants would also be entitled to lead evidence in this regard and rebut the claims of the applicants.

10. The Court, after framing of issues, would consider if a DNA test is also required, which, if permissible scientifically, could be conducted with the other nephews of Mr. Rajinder Kumar Saini, who are already impleaded in the present suit as legal heirs of other claimants. The DNA test would be directed after hearing all the parties, only in accordance with law. The impugned order shall not, in any manner, affect the adjudication as to whether or not the Applicants are in fact the legal heirs of Late Mr. Rajinder Kumar Saini. The adjudication of the said issue, would be independent of the findings in the impugned order. The suit would now proceed further before the Trial Court.

11. With the above observations, petition and all pending applications are disposed of.

12. The original trial court record be scanned and retained in this Court in electronic form. The hard copy of the trial court record be sent back to the Trial Court. Detailed directions have been passed in CM (M) 206 of 2018 in respect of the expeditious trial in the suit.

**CM No.54008/2018**

13. This is an application under Order VI Rule 17 CPC seeking to delete

some portion of CM No.4768/2017. The petition itself has been disposed of. However, it is noticed that Smt. Krishna Kumari, aunt (*bua*) of the Petitioner herein had given her no objection to the probate being granted in favour of Shri Rajinder Kumar Saini and Shri Surinder Kumar Saini by way of an affidavit, which was part of Probate Petition no.280A/1984. In view of her stand, since she has passed away, there is no need to implead her legal heirs in the suit. The application is disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**OCTOBER 11, 2019/Rahul**