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

+ FAO(OS) 105/2019 & CM APPLs. 21734/2022, 24841/2019 and 35392/2022

SNEHALATA KUMUDINI JAIN

..... Appellant

Through: Mr. Rajiv Bajaj, Mr. Karan Prakash,
Advocates for applicants, for
assignees (Tejender Singh Yadav).

versus

USHA JAIN & ORS.

..... Respondents

Through: Mr.Naveen R.Nath, Sr.Advocate with
Mr.Lalit Mohini Bhat, Ms.Hetu Arora
Sethi, Mr.Rahul Jain, Ms.Kavita,
Ms.Gayatri Virmani and Ms.Disha
Gupta, Advocates for R-2, 3 & 4.

+ RFA(OS) 57/2019

SNEHALATA KUMUDINI JAIN

..... Appellant

Through: Mr. Rajiv Bajaj, Mr. Karan Prakash,
Advocates for applicants, for
assignees (Tejender Singh Yadav).

versus

USHA JAIN & ORS.

..... Respondents

Through: Mr.Divyam Nandarajog, Panel
Counsel with Mr.Mayank Kamra,
Advocate for R-1.
Mr.Naveen R.Nath, Sr.Advocate with
Mr.Lalit Mohini Bhat, Ms.Hetu Arora
Sethi, Mr.Rahul Jain, Ms.Kavita,
Ms.Gayatri Virmani and Ms.Disha
Gupta, Advocates for R-1 to 3.

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Date of Decision: 07th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

FAO(OS) 105/2019 & CM APPLs. 21734/2022, 35392/2022 and 24841/2019

CM APPLs. 21572/2022, 32276/2022 and 19912/2022 in RFA(OS) 57/2019

1. While CM Applications 21734 and 21572/2022 have been filed by the respondents (Ms.Usha Jain and her two daughters) seeking a declaration that the appeals being FAO(OS) 105/2019 and RFA(OS) 57/2019 have abated following the death of the sole appellant (Late Ms.Snehalata Kumudini), CM Applications 32276 and 35392/2022 have been filed by Shri Tejinder Singh Yadav seeking a declaration that he is the assignee and the sole beneficiary under the Will of the deceased Ms.Snehalata Kumudini.
2. It is pertinent to mention that the present appeals had been filed by Late Ms.Snehalata Kumudini challenging the common order dated 29th April, 2019 passed by the learned Single Judge of this Court in CS(OS) 2186/2011 and TEST. CAS. 45/2012.
3. TEST. CAS. 45/2012 had been filed by the Late Ms.Snehalata Kumudini seeking grant of probate under Section 276 of the Indian Succession Act, 1925 in respect of an alleged will dated 8th March, 2011 of Late Sh. Satendra Jain. It was the case of Late Ms.Snehalata Kumudini that she was the lawfully wedded second wife of Satendra Jain after he had

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divorced his first wife Ms. Usha Jain, (respondent in the present appeals) and the suit properties had been bequeathed in her favour by Satendra Jain by virtue of a will dated 8th March, 2011.

4. CS(OS) 2186/2011 was filed by Ms.Usha Jain and her two daughters seeking possession of the suit properties.

5. The learned Single Judge by way of the impugned judgment has held that the appellant- Ms.Snehalata Kumudini had failed to prove that the deceased Satendra Jain had divorced Usha Jain and that Ms.Snehalata Kumudini was legally married to late Satendra Jain. The learned Single Judge also held that in the absence of any other documentary or oral evidence which would corroborate the stand taken by Ms.Snehalata Kumudini with regard to her marriage, the declaration in the Will became highly suspicious and the structure of the Will appeared to be tailor-made to support the plea advanced by the propounder of the Will. The learned Single Judge further held that the exclusion of the lawfully wedded wife and the children of the deceased is shrouded with grave suspicion and the Late Ms.Snehalata Kumudini had not produced any evidence to prove the alleged sour relationship between the Testator and his family. The Court noted that the alleged declarations made in the will regarding the status of Ms.Snehalata Kumudini's marriage were false and untrue and they added weight to the suspicious circumstances.

6. It was observed by the learned Single Judge that the properties mentioned in the will were treated as Hindu Undivided Family (hereinafter referred to as 'HUF') in the income tax record and there was sufficient material on record to show that the Testator was also treating the properties



as part of an HUF which further added to the suspicious circumstances surrounding the execution of the will.

7. As a consequence, the Court held that Ms.Snehalata Kumudini had not discharged her burden of proof and it was not satisfied that the document in question propounded was the last will of late Mr.Satendra Jain. Accordingly, the Probate Petition being TEST. CAS. 45/2012 filed by appellant for grant of probate for alleged will dated 08th March, 2011 allegedly executed by Mr. Satendra Jain in favour of the appellant, was dismissed. On the other hand, **CS (OS) 2186/2011** filed by respondents No.1 to 3 was decreed. Thus, decree of possession in respect of the suit property viz Satjai Orchards, 11A Green Meadow Farms, Satbari, New Delhi-110030 was passed in favour of respondents No.1 to 3, along with other reliefs.

8. Aggrieved by the decision of the learned Single Judge, Ms.Snehalata Kumudini filed the present appeals before this Court. During the pendency of the present appeals, Ms.Snehalata Kumudini expired and the Respondents (Ms.Usha Jain and her two daughters) moved applications seeking directions that the proceedings have abated. The Court vide order dated 16th August, 2022 directed the parties to maintain status-quo.

9. Later on, applications being CM APPL. 35392/2022 in FAO(OS) 105/2019 and CM APPL. 32276/2022 in RFA(OS) 57/2019 were filed on behalf of Mr.Tejinder Singh Yadav under Order XXII Rule 10 read with Order XXII Rule 3 of Code of Civil Procedure, 1908 (CPC), for taking the alleged assignment of Ms.Snehalata Kumudini and the amended memo of parties on record as the only surviving legal heir of Ms.Snehalata Kumudini, namely, her brother Mr.Sampat Barnabas, who is staying in the United



States of America (USA), has refused to come on record. It is stated that during her lifetime Ms.Snehalata Kumudini had executed a registered will dated 26th June, 2015 bequeathing her share in the suit properties in favour of the applicant, namely, Mr. Tejinder Singh Yadav. It is further stated that the applicant is in possession of the suit properties and the right to sue has survived in his favour.

10. Since in the present case, admittedly, the legal representative of the deceased Ms.Snehalata Kumudini i.e. Mr.Sampat Barnabas has not filed any application under Order XXII Rule 5, this Court is of the view that the proceedings in question have abated.

11. As regards the plea on behalf of applicant, Tejinder Singh Yadav that right to sue survives in his favour and that he may be taken as assignee of the deceased appellant, no order can be passed by this Court in his favour declaring him as legal representative or assignee of the deceased appellant as the respondents No.1 to 3 have vehemently disputed the claim of the applicant and have contended that there is no assignment in favour of the applicant. Besides, this Court takes note of the fact that the applicant himself has conceded in his applications that the brother of the deceased appellant has refused to give any consent either for becoming a legal heir or to share his personal details, for the purposes of prosecuting the present proceedings. Thus, the applicant is stranger to the proceedings. The sole surviving legal representative of the deceased appellant i.e. her brother who resides in USA is not before this Court. This Court has already arrived at a finding that in the absence of requisite application by the brother of the deceased appellant, the present appeals have abated. Whether or not the applicant Tejinder Singh



Yadav is assignee/ legal representative of the deceased appellant is a highly disputed question of fact and would have to be decided after adducing evidence.

12. Till the determination of the issue with regard to claim of the applicant being assignee/legal representative of the deceased appellant, the applicant Tejinder Singh Yadav has no right to represent the estate of the deceased appellant. Thus, this issue would have to be got determined by the applicant in appropriate proceedings.

13. Infact, the Supreme Court in ***Jaladi Suguna (Deceased) Through LRS Vs. Satya Sai Central Trust and Others, (2008) 8 SCC 521*** has held that even in cases wherein an applicant claims to be a legal representative of the deceased, he/she shall have no right to represent the estate of the deceased or prosecute or defend the case till the question of legal representative is determined by the Court and such legal representative is brought on record. The Supreme Court went on to hold that the determination as to who is the legal representative under Order XXII Rule 5, will be for limited purpose of representation of the estate of the deceased for adjudication of that case.

14. Subsequently, in ***Mahanth Satyanand Alias Ramjee Singh Vs. Shyam Lal Chauhan and Others, (2018) 18 SCC 485*** while interpreting Order XXII Rule 5, the Supreme Court has held that if the question of deciding the legal representative of a legatee arises before an Appellate Court, it may direct the subordinate Court to make enquiries by leading evidence if any through the process of trial and record its finding as to who is the legal representative. Further after considering the finding recorded by



the Trial Court, the Appellate Court can decide and bring on record the legal representative of the deceased.

15. Since in the present case, Mr.Tejinder Singh Yadav claims to be an assignee and not a legal representative of Ms.Snehalata Kumudini, this Court is of the view that his case stands at a lower pedestal.

16. Keeping in view the aforesaid gamut of facts and law, this Court is further of the view that Mr. Tejinder Singh Yadav's averment that he is the assignee of Ms.Snehalata Kumudini is highly disputed and cannot be accepted at face value.

17. Consequently, this Court is of the view that it would be appropriate if Mr.Tejinder Singh Yadav seeks a declaration in an independent proceeding from an appropriate Court that he is the assignee of the deceased Ms.Snehalata Kumudini. If and when such a declaration is obtained from a competent Court, Mr.Tejinder Singh Yadav would be at liberty to seek revival of the present proceedings. It is clarified that if such a proceeding is filed by Mr.Tejinder Singh Yadav, the legal heirs of late Mr.Satendra Jain, i.e. Ms.Usha Jain as well as her two daughters shall be impleaded as parties.

18. On the last date of hearing, both the learned counsel had stated that their respective clients were in the possession of the suit properties. Consequently, this Court had appointed a Local Commissioner to verify the factum of possession.

19. The Local Commissioner appointed by this Court has filed a report dated 5th July, 2023, wherein it is stated that the Ms.Usha Jain and her daughters are in settled possession of the suit property. Neither Mr.Tejinder Singh Yadav nor any of his representative or employees were found on the



suit premises. This position is taken note of.

20. Accordingly, the present proceedings are disposed of as having abated. It is clarified that the present appeals have not been disposed of on merits.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 7, 2023
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