



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order : 21st July, 2023**
 + **C.R.P. 186/2023 & CM APPL. 36127/2023**
TARUN VEDI Petitioner

Through: Mr. Vikrant Mittal, Advocate.

versus

SUDERSHAN VEDI (D) THR. HER LR - MS. AMITA VASHISHT
 Respondent

Through: Ms. Rashmeet Kaur and Mr. Bhagay Ajith, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition has been filed under Section 115 read with Section 151 of Code of Civil Procedure, 1908 (hereinafter "CPC") against the order dated 29th April 2023 passed by the Civil Judge in CS SCJ No. 612321 of 2016 seeking the following reliefs:

"a) set aside the impugned order/judgment dated 29.04.2023 passed by the Ld. Court of Ms. Disha Singh, Civil Judge-02, West; Tis Hazari Courts, Delhi in CS SCJ no. 612321 of 2016 viz. "Smt. Sudershan Vedi (since deceased) vs. Sh. Tarun Vedi", and thereby direct that this suit stands abated with the demise of original plaintiff - Smt. Sudershan Vedi,
b) pass any other order or further relief which this Hon'ble Court deems fit & proper in favor of the petitioner."



FACTUAL MATRIX

2. The father of the petitioner, Sh. K.K. Vedi executed a Will dated 9th May 2000 in favour of his wife Smt. Sudershan Vedi (plaintiff in the suit, “deceased plaintiff”/“original plaintiff”) bequeathing the suit property in her name. Sh. K.K. Vedi also executed a General Power of Attorney (hereinafter “GPA”) dated 20th May 2000, in favour of the deceased plaintiff, giving her the authority to decide on matters of sale, mortgage, gift or transfer of the suit property.

3. The deceased plaintiff executed a Sale Deed dated 22nd November 2003, in favour of the petitioner, making him the sole owner of the suit property. Seven years after the execution and registration of the said Sale Deed, on 17th March 2010, the deceased plaintiff filed a suit against the petitioner under Sections 31 and 34 of the Specific Relief Act, 1963 seeking a declaration that the Sale Deed dated 22nd November 2003, is null and void. She further prayed for a permanent injunction to be placed against transferring the suit property to any third party.

4. The deceased plaintiff/ original plaintiff passed away on 24th September 2019, before the conclusion of the suit. Therefore, the deceased plaintiff’s daughter, the respondent filed an application under Order XXII Rule 3 of CPC, to substitute the deceased plaintiff. The petitioner opposed the said application contending that the right to sue does not survive in the case of legal heirs of a holder of a Power of Attorney (hereinafter “POA”).

5. After hearing the arguments from both the parties, the learned Trial Court passed an order dated 29th April 2023, allowing the application for impleadment of the Respondent. The learned Trial Court held that the right to sue survives in the applicant, as she is not only the legal representative



but also the legal heir of the deceased, to whom the suit property was bequeathed through a Will dated 1st March 2018. The learned Trial Court held that:

“Since, the main question of survival of right to sue in the applicant is revolving around the fact that whether the plaintiff would have ultimately been entitled to the relief claimed, having regard to the merits of the case upon the appraisal of the evidences. Hence, it cannot be said that the right to sue is not surviving in the applicant, in as much as the applicant is not merely a legal representative but also a legal heir to the deceased plaintiff upon whom the deceased plaintiff had bequeathed her entire estate vide Will dated 01.03.2018, which has not been challenged by the defendant/any of the legal heirs of the deceased plaintiff. Further, Will need not be registered or probated in NCT of Delhi.

Whether the parties would be ultimately entitled in their claim or defence as the case may be-can only be determined having regard to the merits of this case and same is not the considering factor at the time of deciding an application under Order 22 Rule 3 CPC. It is further clarified that answering an application under Order 22 Rule 3 CPC only amounts to the fact that the suit may be represented by the person so allowed and it does not amount to any declaration or conferring of any rights or liabilities upon any of the party to the suit. In view of the same, the application of the applicant seeking impleadment under Order 22 Rule 3 CPC stands disposed off as allowed and let Ms. Amita Vashisth be impleaded as the LRs of the plaintiff in the present matter. Since Mr. Jayant Vedi has notice of matter and chose not to appear and Ms. Kavita Vedi has given her statement on oath, let Sh. Jayant Vedi and Kavita Vedi be impleaded as proforma defendants in as much as the main dispute, even as per the contents of the Will on the face of it ultimately remains between Ms. Amita Vashisth and defendant.”



6. Being aggrieved by the impugned order dated 29th April 2023, passed by the learned Trial Court, the petitioner has approached this Court by way of filing the instant revision petition.

SUBMISSIONS

(On behalf of the petitioner)

7. It is submitted by the learned counsel appearing on behalf of the petitioner that the learned Trial Court failed to consider the fact no right to sue survives in any of the legal representatives of a deceased plaintiff-POA holder. It is further submitted that the plaintiff merely received a GPA from her husband and did not hold any ownership rights therein. Her role was limited to signing the Sale Deed, which she did in favor of the petitioner.

8. It is submitted that the plaintiff failed to implead any of the legal representatives of Sh. K.K. Vedi, the executant of the GPA in the original suit, thereby establishing that it was the personal action of the deceased plaintiff. It is further submitted that the deceased plaintiff did not seek protection of possession, but only a restraint against the petitioner from transferring the property to a third party. Hence, this is not a claim of ownership right in the property and the right to sue does not survive in the present case.

9. It is submitted that the deceased plaintiff herself admitted in her plaint that the Sale Deed was executed out of natural love and affection in favour of the petitioner and hence, cannot be challenged by filing a civil suit.

10. It is submitted on behalf of the petitioner that the learned Trial Court overlooked the judgment of the Hon'ble Supreme Court in ***Paras Ram Gupta by LRs vs Ram Asrey, (2000) 10 SCC 475***, wherein it was affirmed



that the right to sue does not survive on the legal representatives of a deceased POA holder.

11. It is further submitted on behalf of the petitioner that the deceased plaintiff did not press on the Will which was executed by Sh. K.K. Vedi in her favour, to seek any right arising out of it. The petitioner contends that the same Will cannot be relied now by the respondent. It is further submitted that the application itself lacks a claim that the right to sue survives in favor of the applicant.

12. It is submitted on behalf of the petitioner that the respondent's claim of continuing in the proceedings is prohibited by virtue of Section 6 (e) of Transfer of Property Act, 1882, which prohibits the transfer of the right to sue. It is also submitted that Order XXII Rule 3 of the CPC already provides an elaborate scheme for such matters, superseding any testamentary claims.

13. Hence, in view of the foregoing submissions, the petitioner seeks that the impugned order of the learned Trial Court be set aside and also seeks a direction that the original suit stands abated.

(On behalf of the respondent)

14. It is submitted by the learned counsel appearing on behalf of the respondent that the instant revision petition against the impugned order is in violation of Sub-Section (1) of Section 115 of the Code of Civil Procedure. It is submitted that if the order was passed in favour of the petitioner, the suit would have merely been abated and not finally disposed of which are entirely two distinct terms.

15. It is further submitted that the petitioner has intentionally not placed on record the Will of Sh. K.K. Vedi dated 9th May 2000, whereby the suit



property was entirely bequeathed to the deceased plaintiff and the Will of the deceased plaintiff dated 1st March 2018, whereby a portion of the suit property was bequeathed to the respondent. It is further submitted that the concealment is fatal to the present revision petition thereby, making the petition liable to be dismissed.

16. It is further submitted that the respondent was bequeathed 50% ownership in the said property and was allowed to continue in the suit to its logical conclusion thereby establishing the respondent's right to sue.

17. Learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court in ***Kedar Lal vs. Babu Lal Vyas & Ors., (2003) 9 SCC 624***, wherein the Court held that the right to sue exists in a person in whose favour a Will has been executed by a deceased party. The relevant portion has been reproduced hereinbelow:

“3. According to the appellant, Kalawati, during her lifetime had executed a Will in favour of the appellant which sought to convey to the appellant “the right to plead the said case” and “the right to all debts and credits as may be decided by the court”. In 1996 Kalawati died. The appellant made an application for being substituted as the plaintiff in place of Kalawati as her legal representative under the Will. The application was dismissed by the trial court on the ground that the Will had merely sought to effect a transfer of a right to sue and that by virtue of Section 6(e) of the Transfer of Property Act such a transfer was impermissible in law. The application of the appellant being rejected by the trial court, the appellant preferred a revisional application under Section 115 of the Code of Civil Procedure, 1908. The revisional application was also dismissed, it appears on two grounds viz. (i) Kalawati had died long back and the appellant had not applied for substitution of her legal heirs, and (ii) the right to sue did not survive to the appellant.



4. *The appeal of the appellant preferred from this impugned order must be allowed. The first reason given by the High Court proceeds on an incorrect statement of fact. The appellant was claiming as Kalawati's heir and it is nobody's case that the application for substitution had been made after any delay. As far as the second reason given by the High Court is concerned, the Court does not say why the right which Kalawati had to sue did not survive to the appellant, and, given the circumstances of the case, we are unable to find any reason in support of the second conclusion of the High Court.*

5. *The trial court also erred in rejecting the application of the appellant because of the provisions of Section 6 (e) of the Transfer of Property Act. As we have noted above, Kalawati had not only sought to transfer the mere right to represent her case in the pending litigation to the appellant but had also given the appellant her interest in the subject-matter of the litigation. For these reasons, the decision of the High Court is set aside. The application for substitution filed by the appellant must be allowed, however, leaving the question of the validity and genuineness of the Will open. Let the appellant be substituted in place of Kalawati in the pending proceedings and the suit be proceeded with in accordance with law."*

(emphasis supplied)

18. It is submitted that by virtue of the Wills dated 9th May 2000 and 1st March 2018 and as per the Hindu Succession Act, 1956, the respondent, being the legal heir of the deceased plaintiff stands to inherit the suit property. Hence, the respondent has a vested interest in the suit property along with the right to continue the suit.

19. It is also submitted that the petitioner in 2021 had filed a suit for possession and other benefits against the respondent since she was in possession of the suit property. It is further submitted that possession of the suit property entitles the respondent to get impleaded in the suit and her right to sue therefore survives.



20. Learned counsel for the respondent relied on the judgment of a Co-ordinate Bench of this Court in ***Bhagwan Singh vs. Kanhaiya Lal, Now Deceased Through his LRs & Ors, 2022 SCC OnLine Del 2319***, which held, “if Kanhaiya lal had a right to sue, indisputably, so would his legal representatives”. It is further submitted that since, the respondent is a legal heir and representative of the deceased plaintiff, she is entitled to continue in the present suit.

21. Learned counsel appearing on behalf of the respondent opposed the reliance placed by the petitioner on the judgment of the Hon’ble Supreme Court in ***Paras Ram Gupta by LRs vs Ram Asrey (Supra)*** and submitted that the portion relevant to this case, to argue that the respondent has been rightly impleaded as a legal representative, is re produced hereinbelow:

“2. We have heard counsel for the parties and are of the view that once it is accepted that Ram Asrey entered into an agreement for sale in favour of Paras Ram Gupta and Paras Ram Gupta had died during the pendency of the suit, the legal representatives of deceased Paras Ram Gupta were entitled to seek injunction in regard to their possession by virtue of the agreement for sale. Without going into the question whether the right to sue survives to heirs on the death of the power-of-attorney holder, we hold that the legal representatives of Paras Rant Gupta were entitled to the substituted on the strength of the agreement for sale entered into in favour of Paras Ram Gupta. Since right to sue survives to heirs and legal representatives of the deceased Paras Ram Gupta, this appeal deserves to be allowed.”

22. It is also submitted that despite the claim of the petitioner that the legal representatives of a POA holder cannot be impleaded under Order



XXII Rule 3, the respondent is still rightfully impleaded since she has an interest in the suit property by virtue of the Will dated 1st March 2018.

23. It is further submitted on behalf of the respondent that the case of the respondent rests on the Wills dated 9th May 2000 and 1st March 2018 whereas the petitioner is misleading the Court by arguing that POA confers a personal right and legal representatives cannot be impleaded. It is further submitted that the suit from which the impugned order arises was filed in 2010 and continued till 2019, till the demise of the deceased plaintiff. It is submitted that no objections were taken by the petitioner in this regard at that time.

24. Hence, in view of the foregoing submissions, the respondent seeks that this Court be pleased to dismiss the said revision petition thereby upholding the impugned order.

ANALYSIS AND FINDINGS

25. Heard learned counsel appearing on behalf of the parties and perused the record.

26. It is submitted on behalf of the petitioner that no right to sue survives on the legal representatives of a POA holder. *Per contra*, it is submitted on behalf of the respondent that the suit property was bequeathed in favour of the deceased plaintiff by Sh. K.K. Vedi and in turn the respondent was bequeathed half of the property by the deceased plaintiff making the respondent a legal heir, allowing her to continue the suit to its logical conclusion and providing her a right to sue.



27. It is relevant at this stage to reproduce Order XXII Rule 3 of the Civil Procedure Code. It lays down as under:

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.—(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.”

28. At the outset, it is relevant for this Court to appreciate the intent of Order XXII of the CPC. The object of Order XXII is the continuation and culmination, in an effective adjudication and not to retard the proceedings, and the rights of the parties involved. Since, Order XXII is a procedural tool, the same is to be interpreted flexibly as to render substantial and real justice to the parties. It is trite law that procedure is the handmaid of justice and should not hamper the cause of justice. This intent behind Order XXII was explained by the Hon’ble Supreme Court in the case of ***Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272***. The relevant paras have been reproduced herein:

“Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice



and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not interdependent upon one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper



exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others as well.”

29. After perusing the abovementioned contentions, and the intent of Order XXII, it is relevant for this Court to consider whether the respondent is a legal representative for the purposes of continuing the suit in the present case. The term ‘legal representative’ has been defined under Section 2(11) of the CPC. The definition is reproduced herein:

“"legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

30. The Karnataka High Court in ***Vrishendramani v. Venugopal Rai***, **1994 SCC OnLine Kar 279**, has provided an expansive interpretation to the term ‘legal representative’ and has observed that the inheritance is a legal and fictitious continuation of the personality of a dead man and a legal representative assist in the representation of that personality. The relevant passage has been reproduced herein:

“13. A legal representative in a given case need not be a surviving spouse, son daughter, father or mother of deceased tenant living with the tenant in the petition schedule property up to the death of tenant. Legal representative ordinarily means a person who in law represents the estate of deceased person or persons on whom the estate devolves on the death of individual.



Reference be made to the statement in Salmond's Jurisprudence 11th Edition, Page 482 that:—

“Inheritance is in some sort of a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents. The rights which the dead man can no longer own or exercise in propria persona and the obligations which he can no longer in propria persona fulfil, he owns; exercises and fulfils in the person of a living substitute. To this extent and in this fashion it may be said that legal personality of a man survives his natural personality, until his obligations being duly performed and his property duly disposed of his representative among the living is no longer called for.””

31. In the case of **Manranjan v. Rani Brijraj, 1946 SCC OnLine Pat 275**, the Patna High Court has held that the estate is said to be sufficiently represented if one or more heirs are impleaded in the suit in a *bona fide* manner without any element of fraud, and collusion. The Court observed that:

“Chowdhury Mahabir Singh v. Musst. Motirani Kuar [(1917) A.I.R. (Pat.) 432.] , Keshavasami Iyar v. A.L.R. Narayanan [(1912) 18 Ind. Cas. 632.] , Sri Gaja Rati Radhamani Gam v. Maharani Sri Pusapati Alakarajswari [(1890) L.R. 19 Ind. App. 184.] and Gouri Nath Kakaji v. Musst. Gaya Kuer [(1928) 10 Pat. L.T. 199, P.C.] to establish that when there are several widows succeeding to the estate 1, or several co-administrators administering the estate or several co-legatees entitled to the estate, they must all join together in order to affect the parent estate by any transaction of their own and if any one of them is omitted from the transaction concerned, the transaction does not bind the estate. He has also relied upon a decision of the Madras High Court in Rathnammal v. Sundaram Achari [(1933) A.I.R. (Mad.) 508.] in which it was held that if a decree for a debt due to the



deceased debtor is passed against one of her representatives having a life-estate and the other representatives though originally impleaded are subsequently expunged or exonerated from the liability the decree passed against the representative with a limited interest cannot be executed against the others. In reply the learned Counsel appearing for the respondent, Mr. Jha cites *Muttyjan v. Ahmad Ali* [(1882) I.L.R. 8 Cal. 370.] , *Dinamoni Chowdhurani v. Elahadut Khan* [(1904) 8 Cal. W.N. 843.] and *Musst. Daropdi v. Musst. Sada Kuer* [(1913) 22 Ind. Cas. 242.] in which it has been held that some of the heirs may under certain circumstances represent the entire estate. In the view that I am going to take with, regard to the interpretation of the decree as it stands it is not necessary for us to give any final opinion, upon these respective propositions of law; but in view of the length of argument advanced by learned Counsels at the Bar, I feel constrained to say that the true rule consists in that where one or more heirs out of many is impleaded as being solely in possession of the properties of the deceased and it is so done bona fide without any element of fraud, or collusion, the estate can be held to have been sufficiently represented even though all the co-heirs are not brought on the record. Of course the decisions vary on account of the varying facts and circumstances in which the decree was passed. Learned Counsels for both sides have also cited a large number of authorities in order to help us to come to a decision as to whether the rule of primogeniture prevails in this estate. Learned Counsel for the appellant has cited *Rani Brijraj Kumari v. Rambilas Singh* [(1944) Pat. W.N. 137.] , a decision relating to this very estate, in which this Court has come to the conclusion that the estate is not governed by the rule of primogeniture in matters of succession. He has also placed before us two unreported decisions which proceed on the same basis. It has been represented to us that the decision which has been reported in 1944 P.W.N. 137 is now under appeal to the Privy Council. As against that Mr. Jha appearing for the other side has cited: *Babu Gunesh Dutt Singh v. Maharaja Moheshwar Singh* [(1855) 6 Moo. I.A. 164.] , *Fanindra Deb Raikat v. Rajeswar Das alias Jogindra Deb Raikat* [(1884) L.R.



12 Ind. App. 72.] and Martand Rao v. Malha Rao [(1927) L.R. 55 Ind. App. 45.] . He relies upon these decisions to show the futility of the logic and the reasoning advanced in the decision reported in 1944 P.W.N. 137 in view of the observations of the Privy Council. He relies upon several passages which are to the effect that if for a large number of years—say 200 years—an estate has been handed down from generation to generation to a single heir that would be a circumstance furnishing a very cogent proof of impartibility and urges that in the face of this expression of opinion of the Privy Council it cannot be held to be correct that in this particular case the very circumstance of its descent to one single heir for a large number of generations is not sufficient to establish impartibility. The argument is no doubt fallacious. The mere fact of descent to a single person without more has never been held by the Judicial Committee to establish primogeniture beyond all reasonable doubt. There may be cases in which on such descent, the rival heirs might have been sufficiently compensated thereby preventing them from advancing their claims or some testamentary disposition may have intervened or there might be similar other circumstances preventing the estate from descending to more than one heir. Therefore, it will be difficult for us to come to any final decision on argument furnished on the basis of the authorities cited by Mr. Jha to pronounce that the decision reported in 1944 P.W.N. is not correct. At any rate it is not necessary for us to come to any decision because for the purposes of determining whether the decree binds the estate in the hands of the junior Rani, we assume that the senior Rani did represent the estate at the time.”

32. The Hon’ble Supreme Court in the case of **Jaladi Suguna v. Satya Sai Central Trust**, (2008) 8 SCC 521 and **Kedar Lal vs. Babu Lal Vyas & Ors.**, (2003) 9 SCC 624, has clearly held that a legatee under a will, who intends to represent the estate of the deceased testator is an intermeddler with the estate of the deceased and hence, will be a legal representative. The relevant paragraph has been reproduced herein:



“12. “Legal representative” according to its definition in Section 2(11) CPC, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. Thus a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased, will be a legal representative.”

33. From the foregoing precedents and discussions, this Court is of the view that the since, the respondent has a Will dated 1st March 2018 executed in her favour, she can be said to be a legal representative of the deceased plaintiff, under the ambit of Section 2(11) of the CPC and hence, the right to sue survives with the respondent. There is no need for this Court to delve into the question of the survival of right to sue on the death of the POA holder as the presence of a Will dated 1st March 2018 and 9th May 2000, negates the relevance of a POA. The learned Trial Court has correctly appreciated this point of law when it stated that the cause of action survives to the legal representatives, as they can assert the same right as the deceased plaintiff. The learned Trial Court correctly observed that:

“The term legal representative as defined under section 2 (11) CPC means a person who in law can represent the estate of a deceased person and includes any person who intermeddles with the estate of the deceased. it further includes a party upon whom the estate would devolve upon the death of the party so suing or being sued. In this regard, the law is settled that it shall include a person who seeks to represent the estate of a deceased person on the basis of any oral wishes/written instrument including a Will in favour of such a person. Further, right to sue means that the cause of action upon which the suit was originally filed by the deceased plaintiff/defendant the same is still existing upon the LRs of the deceased and the LRs of the deceased may assert their rights in the same relief which was claimed by the deceased party at the time of his/her



death.”

34. It is important for this Court to clarify that the object of Order XXII is to carry out the suit and not with the effect of conferring any right of heirship to the parties. The order passed on an application filed under Order XXII cannot be said to be on the merits of the case and hence, the order of substitution does not make the legal representative an heir to the property of the deceased. The Himachal Pradesh High Court has used this line of thought in the case of **Suraj Mani v. Kishori Lal, 1976 SCC OnLine HP 16**, wherein it held that:

“5. The contention of learned counsel for the petitioner is that by the impugned order the learned Senior Subordinate Judge has permitted a trespasser to be brought on the record and has enabled him thereby to prosecute the suit. It is submitted by learned counsel that this is not permissible in law. I am unable to agree. The definition of “legal representative” in Section 2(11) of the CPC is very wide. It will certainly include a person who seeks to represent the estate of a deceased person on the basis of a will said to be executed by the deceased in his favour. The estate will be sufficiently represented by such a person. The learned Senior Subordinate Judge acted within his jurisdiction in substituting the respondent as the legal representative of the deceased. The substitution does not make the legal representative heir to the property of the deceased. It was pointed out by the Lahore High Court in Daulat Ram v. Mt. Meero, AIR 1941 Lah 142, in a case where the legal representative of a deceased plaintiff was brought on the record, that a decision to do so under Order 22, Rule 5 must be limited to the purpose of carrying on the suit and cannot have the effect of conferring any right to heirship or to property. Even if the learned Senior Subordinate Judge has held that the will relied on by the respondent is a valid will, that finding had been rendered merely for the purpose of enabling the prosecution of the suit to go on. It cannot be construed as a



decision on the merits of the suit. The finding that the will is valid cannot operate as res judicata where that very question needs to be decided in order to resolve the controversy in the suit on its merits. I am supported in this view by Parsotam Rao v. Jankibai, (1906) ILR 28 All 109; Antu Rai v. Ram Kinkar Rai, ILR 58 All 734 : (AIR 1936 All 412) and Chiragh Din v. Dilwar Khan, AIR 1934 Lah 465. It was held by the Allahabad High Court in Ram Kalap v. Banshi Dhar, AIR 1958 All 573 that an order under Order 22, Rule 5 involves a summary enquiry as to who should be substituted in place of the deceased party in the pending proceeding and that such a decision does not operate as res judicata. It is still open to the petitioner in the present case, during the trial of the suit, to establish that the will is incompetent and confers no right, title and interest on the respondent and that, therefore, the respondent is not entitled to any relief in the suit.”

35. This Court cannot delve into the merits of the case in an application filed under Order XXII Rule 3 of the CPC. The validity of the Will dated 1st March 2018 and the Will dated 9th May 2000, made in the favour of the deceased plaintiff will be tested on the anvil of evidences led by the parties during the trial. Further, since it is not a mandate in Delhi to get the will registered or probated, the same cannot interfere in the respondent's path to be substituted as legal representatives of the deceased plaintiff. The learned Trial Court has rightly perused the Wills and rightly held that the application is based on the right to sue, the aspect of entitlement to the claim cannot be adjudicated at this stage and the same will be determined at time of the examination of the merits of the case. The learned Trial Court observed that:

“Since, the main question of survival of right to sue in the applicant is revolving around the fact that whether the plaintiff would have ultimately been entitled to the relief claimed.



having regard to the merits of the case upon the appraisal of the evidences. Hence, it cannot be said that the right to sue is not surviving in the applicant, in as much as the applicant is not merely a legal representative but also a legal heir to the deceased plaintiff upon whom the deceased plaintiff had bequeathed her entire estate vide Will dated 01.03.2018, which has not been challenged by the defendant/any of the legal heirs of the deceased plaintiff. Further, Will need not be registered or probated in NCT of Delhi.

Whether the parties would be ultimately entitled in their claim or defence as the case may be-can only be determined having regard to the merits of this case and same is not the considering factor at the time of deciding an application under Order 22 Rule 3 CPC. It is further clarified that answering an application under Order 22 Rule 3 CPC only amounts to the fact that the suit may be represented by the person so allowed and it does not amount to any declaration or conferring of any rights or liabilities upon any of the party to the suit. In view of the same, the application of the applicant seeking impleadment under Order 22 Rule 3 CPC stands disposed off as allowed and let Ms. Amita Vashisth be impleaded as the LRs of the plaintiff in the present matter. Since Mr. Jayant Vedi has notice of matter and chose not to appear and Ms. Kavita Vedi has given her statement on oath, let Sh. Jayant Vedi and Kavita Vedi be impleaded as proforma defendants in as much as the main dispute, even as per the contents of the Will on the face of it ultimately remains between Ms. Amita Vashisth and defendant.”

36. It is relevant at this stage, for this Court to discuss, the scope and ambit of the revisional powers under Section 115 of the CPC. Section 115 of the CPC confers a supervisory power to this Court with the main aim of keeping superintendence. The scope of intervention by this Court is minimal and only to keep the illegal order of a Trial Court at bay. The intent of Section 115 has been explained by the Hon’ble Supreme Court in the case



of *ITI Ltd. v. Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510, wherein the Court observed that:

“18. Power conferred on the High Court under Section 115 of the Code of Civil Procedure, 1908 over all subordinate courts within its jurisdiction is a supervisory power and has been distinguished from its power of appeal to correct errors of fact and law. The power of revision under Section 115 being in the nature of power of superintendence to keep subordinate courts within the bounds of their jurisdiction cannot be readily inferred to have been excluded by provisions of a special Act unless such exclusion is clearly expressed in that Act.”

37. The Hon’ble Supreme Court in the case of *Michael Mascarenhas v. John Mascarenhas*, 1996 SCC OnLine Kar 222 has explained the conditions for the invocation of Section 115 the CPC. The Court has explicitly stated that every order cannot be intervened by the revisional Court. The Court has to satisfy that the Courts below have either failed to exercise their jurisdiction, exercised a jurisdiction not vested in them or acted in an illegal or irregular manner. The relevant paragraphs have been reproduced herein:

“3B. There could be no dispute that the revisional powers or this Court under Section 115 CPC. cannot be invoked unless the following conditions exist:

- (1) There must be a case decided by a Court;*
- (2) The Court deciding the case must be subordinate to the High Court, and*
- (3) No appeal must lie (to the High Court) against the decision; and*
- (4) In deciding the case, the subordinate court must appear to have*
 - a) exercised a jurisdiction not vested in it by law, or*
 - b) failed to exercise a jurisdiction vested in it by law, or*
 - c) acted in the exercise of its jurisdiction illegally or with*



material irregularity.

xxx

xxx

xxx

8. In this context, it is useful to refer to the observations made by the Supreme Court [(1969) 2 SCC 201 : AIR 1970 SC 406.] , which reads as under:—

“A case may be said to be decided if the Court adjudicates for the purpose of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of Section 115 of CPC.””

38. Enumerating the limited scope of the revisional Court in exercising jurisdiction under Section 115 of the CPC, the Bombay High Court in ***Shripat Chaituji Mahajan v. Sanjay Radheshyam Jaiswal*, 2001 SCC OnLine Bom 1020**, has noted that the revisional Court cannot strike at the findings arrived by the subordinate Courts. The power of the revisional Court is certainly limited in comparison to an appellate Court. The Court observed that:

“10. In this revision, the order passed by the Trial Court rejecting the application filed by the applicant in the suit is under challenge. At the outset it is made clear that scope for the High Court to interfere in exercising jurisdiction under section 115 of Civil Procedure Code is very limited. This section is enacted with a view to enable the High Court to correct, when necessary, certain classes of errors of jurisdiction committed by subordinate courts. If the subordinate court in the decision of the case, in the exercise of its jurisdiction has committed illegality or material irregularity, then only the High Court can interfere with the orders passed by the subordinate court. When this condition is satisfied, that a subordinate court has committed illegality or material irregularity then the High Court can interfere with the decision. The High Court cannot in the exercise of revisional powers under this section attack the findings of facts of subordinate court. No doubt the power in revision is limited one in comparison to the appellate power. Whether the courts



decide it rightly or wrongly, they had jurisdiction to decide the case even if they decided it wrongly, they did not exercise their jurisdiction illegally or with material irregularity. In such circumstances, the High Court can not interfere with the order passed by the subordinate court.”

39. The Hon’ble Supreme Court in the case of ***Prem Bakshi v. Dharam Dev, (2002) 2 SCC 2***, has settled the law and has finally concluded that the revisional Court will intervene in the orders of the subordinate Courts only when there is failure of justice and irreparable injury being caused to the party concerned. The Court observed that:

“5. The proviso to sub-section (1) of Section 115 puts a restriction on the powers of the High Court inasmuch as the High Court shall not, under this section vary or reverse any order made or any order deciding a issue, in course of a suit or other proceedings except where (i) the order made would have finally disposed of the suit or other proceedings, or (ii) the said order would occasion a failure of justice or cause irreparable injury to the party against whom it is made. Under clause (a), the High Court would be justified in interfering with an order of a subordinate court if the said order finally disposes of the suit or other proceeding. By way of illustration we may say that if a trial court holds by an interlocutory order that it has no jurisdiction to proceed with the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable. The order in question by which the amendment was allowed could not be said to have finally disposed of the case and, therefore, it would not come under clause (a).

6. Now the question is whether the order in question has caused failure of justice or irreparable injury to Respondent 1. It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all, amendments of the



pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party.

7. From the facts extracted above it would show that the appellants only wanted to bring to the notice of the court the subsequent facts and after amendment of the plaint, Respondent 1 would get an opportunity to file written statement and he would be able to raise all his defence. Ultimately if the suit is decided against Respondent 1, he would have a chance to take up these points before the appellate court. It cannot be conceived of a situation that the proposed amendment if allowed would cause irreparable injury or failure of justice as the remedy of Respondent 1, as stated above, is by way of an appeal. We are, therefore, of the view that the order allowing the amendment would not come under clause (b).”

40. Hence, from the foregoing discussions it is clear that this Court has a limited scope of interference under Section 115 of the CPC. The Court’s interference is needed only when the order of the subordinate Court lacks jurisdiction or is ridden with irregularity or illegality as to cause failure of justice or irreparable injury to the rights of the parties concerned. The learned Trial Court, in a reasoned order, has correctly applied the law and has rightly allowed the impleadment application of the respondent.

41. From the perusal of the documents on record, it is clear that the respondent is a legal representative of the deceased plaintiff owing to the Will dated 1st March 2018, executed by the deceased plaintiff herself. This Will has not been challenged by the petitioner/defendant. Further, as far as the title of the deceased plaintiff is concerned, this Court is of the view that, prima facie, the Will dated 9th May 2000, confers a right to the deceased



plaintiff which has been further transferred to the respondent by the deceased plaintiff bequeathing her property in the name of the respondent. Hence, the right to sue does not die with the deceased plaintiff. The same survives to her legal representatives, respondent in this case. The POA will not deter the respondent from contesting the suit as the title to the property in the present case derives from the Will dated 9th May 2000, executed by Late Sh. K.K. Vedi in favour of the deceased plaintiff.

42. This Court has not gone into the merits of the case and has not delved into the authenticity of the Wills. The same may be proved or disproved at the correct stage during the trial. Further, this Court has not adjudicated upon the POA and whether the right to sue survives on the legal representatives of the POA holder as the presence of Wills dated 9th May 2000 and 1st March 2018, negates the necessity of POA in the present case.

43. In view of the discussions in foregoing paragraphs, this Court does not find any cogent reasons to interfere in the impugned order dated 29th April, 2023 passed by the Civil Judge, West Delhi, Tis Hazari Courts. Accordingly, the instant petition, being devoid of any merits, stands dismissed along with pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 21, 2023

Pa/ds

Click here to check corrigendum, if any