



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 10 April 2024**
Judgment pronounced on : 21 May 2024
+ C.R.P. 46/2022 and CM APPL. 16754/2022 (Stay)
DIOCESE OF DELHI-CNI Petitioner
Through: Ms. Veronica Francis, Mr. Arun Francis and Mr. George Francis, Advs.
versus
MR. DEEPAK MARTIN CALEB Respondent
Through: Mr. Raghav Awasthi and Mr. Mukesh Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present civil revision petition filed by the petitioner/revisionist, who is the defendant No. 1 in the suit filed by the respondent/plaintiff pending before the learned Trial Court, assailing the impugned order dated 27.01.2022, whereby the application under Order XXII Rule 3 of the Code of Civil Procedure, 1908¹ filed by the present respondent was allowed, permitting the respondent to be impleaded as Plaintiff in place of his deceased father (original) plaintiff in the suit bearing No. 1005/2018 titled as “*Revd. John H. Caleb v. Diocese of Delhi-CNI and Ors.*”²”

FACTUAL BACKGROUND:

2. Briefly stated, on 12.05.1997, the deceased Plaintiff Revd. John H. Caleb was transferred to the Green Park Free Church by the petitioner/defendant No. 1 to preside over the Church religious work

¹ CPC

² Suit



and act as the priest in the Church from 31.05.1997 onwards. By virtue of his appointment as the resident priest for a short term of the Green Park Free Church, he/deceased plaintiff was allowed to have accommodation in the Church Parsonage at the Ground Floor of the Green Park Free Church, A24 Sri Aurobindo Marg, New Delhi – 110016³. Eventually, the deceased plaintiff retired from the services of petitioner/defendant No. 1 in the month of March, 2001, which fact was acknowledged in the letter dated 21.10.2000 by the deceased plaintiff. However, from March 2001 to 2005, the deceased plaintiff's services were extended as a priest of the Green Park Free Church on *ad-hoc* basis and he was allowed to reside on the suit premises. The superannuation benefits including the gratuity amount was also released to the deceased plaintiff.

3. Further, on 16.11.2007, the deceased plaintiff was re-appointed as a Resident Pastor in the Green Park Free Church and was allowed to retain and reside in the suit premises by the petitioner/defendant No. 1 through then Bishop Rt. Revd. Sunil Kumar Singh. The services of the deceased plaintiff were extended from 2007 to 14.05.2018. The deceased plaintiff vide letter dated 14.05.2018 was informed that his services are no longer extended and that the new Presbyter-in-Charge for Green Park Free Church has been appointed and the deceased plaintiff shall vacate the suit premises to accommodate the new Presbyter-in-Charge.

4. The Bishop of Diocese of Delhi-CNI/defendant No. 2 *vide* letter dated 18.06.2018 requested the deceased plaintiff to vacate the suit

³ Suit premises



premises. On 05.11.2018, the then Bishop Rt. Revd. Warris K. Masih disapproved the request of providing alternate accommodation at Vicarage of St. Martin's Delhi Cantt. to the deceased plaintiff and stated that the Pastorate Committee of Green Park Free Church is ready to pay the house rent for the deceased plaintiff till the month of January, 2019 and requested the deceased plaintiff to vacate the suit premises immediately.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT AND THE IMPUGNED ORDER:

5. Aggrieved, Revd. John H. Caleb/deceased plaintiff filed the suit on 27.10.2018,, thereby seeking the relief of Permanent Injunction against the forceful eviction by the petitioner/defendant No. 1 and defendant No. 2 and the relief of declaration that Green Park Free Church should be declared as an "Independent Church" independent from the management and control of the Diocese of Delhi-CNI. The deceased plaintiff in their suit has contended that in the year 2007, there was a crisis at the Green Park Free Church, as there was no priest to conduct the religious activities, and it was at that time the defendant No. 3 (Members of the Green Park Free Church through Mr. Balwant Singh) requested the deceased plaintiff to take over as the priest of the Green Park Free Church and the deceased plaintiff accepted the request and took over the office of the Green Park Free Church. Following were the reliefs claimed in the suit: -

“(i) A decree of permanent injunction in favour of the plaintiff and against defendant no. 1 and 2 whereby restraining the defendants including their agent, employees, representatives, assignees, associates etc. from forcibly and unlawfully taking the possession of Ground floor House, Green Park, Free Church, A24 Sri



Aurobindo Marg, Green Park, New Delhi-110016 from the plaintiff and further restraining defendant no.1 and 2 from interfering with the peaceful possession and enjoyment of the House property with all its benefits enjoyed by the plaintiff; and

(ii) Pass a decree declaring that Green Park Free Church is an independent and autonomous body jointly founded by Baptist Missionary society and methodist Missionary Society, defendant no.1 and 2 CNI (Church of North India) has no authority to interfere in any manner whatsoever with the affairs of Green Park Free Church.”

6. The petitioner jointly with the defendant No. 2 filed its written statement refuting the allegations of the deceased plaintiff that he was appointed by Defendant No. 3/Balwant Singh. It was further submitted that the nature of the plaintiff's accommodation in the suit premises has been that of a licensee under the petitioner/defendant No. 1 till 05.11.2018, which came to an end on 05.11.2018, when the plaintiff was asked to vacate the suit premises. Therefore, the plaintiff/respondent is liable under law to vacate the suit premises and pay damages and compensation to the petitioner/defendant No. 1 and that the occupation of the suit premises by the deceased plaintiff and his family after 05.11.2018 is unauthorized and illegal. The petitioner/defendant No. 1 and defendant No. 2 also stated that declaring a church “Independent and Free” as alleged in the prayer of the suit is ambiguous and the declaratory relief of declaring the church in question as “Independent” is extremely misconceived and outside the jurisdiction of the Civil Court.

7. On 23.07.2021, during the pendency of the suit, the applicant/respondent herein moved an application under Order I Rule 10 of the C.P.C seeking his impleadment as Plaintiff in the suit on the



ground that he is the son of Revd. John H. Caleb and since the plaintiff was not physically fit to pursue the suit, he may be impleaded as a plaintiff. During the pending adjudication of the application under Order I Rule 10 of the CPC, Revd. John H. Caleb departed for heavenly abode on 30.08.2021.

8. The respondent herein moved an application under Order XXII Rule 3 seeking substitution of his name in place of the deceased plaintiff. The petitioner herein filed its reply to the application stating established proposition of law: - “*A personal action dies with the death of the person on the maxim action personalis moritur cum persona*”. The petitioner/defendant No.1 contended that the applicant/respondent has no right to be substituted in the suit, because the suit becomes nugatory upon the death of the sole Plaintiff Revd. John H. Caleb. The petitioner/defendant No.1 further contended that the applicant/ respondent is neither the necessary party nor the proper party in the suit and that he has no independent right or interest in the suit premises to be substituted in place of the plaintiff in the suit.

9. The learned Trial Court on 27.01.2022 decided the application under Order XXII Rule 3 of the CPC in favour of the respondent herein. It will be apposite of reproduce the finding of the learned Trial Court below: -

“13. Admittedly, the applicant / LR of the deceased plaintiff is in possession of the suit property. Law respects possession. In my considered opinion, the case of the plaintiff is not that he is the owner of the suit property or he is entitled to the office of the deceased plaintiff. The case of the plaintiff is that he should not be dispossessed from the suit property without due process of law. In a democratic country, law frowns upon dispossession through illegal way.



14. The court accords legitimacy and legality only to possession taken in due course of law. The Hon'ble Supreme Court in *State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others [(1989) 2 SCC 505]* dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited.

15. The son of the deceased plaintiff admittedly in possession of the suit property has a right against forcible dispossession without following the due process of law. In *Smt. Bhagwanti (supra)*, relied upon by the defendant no.1 and 2, a suit for simplicitor injunction was filed against the sale defendant to restrain him and his associates etc. from making any kind of interference in the construction work of the first floor of suit property. It was held that the suit has abated after the death of sole defendant as the grievance of the plaintiff was against the defendant in his personal capacity and not against the heirs of the defendant. The facts of this case cannot be applied to the present suit as even though plaintiff has expired, the legal representative of the expired plaintiff who is in possession of the suit property is still under a threat of forceful dispossession. Hence, in my opinion, the right to sue survives in favour of the LR of the deceased plaintiff without prejudice of the rights of the defendants to take the possession of the suit property by exercising their legal remedies. Another judgment on which reliance has been placed by Ld. Counsel for Defendants is *Guizar Shah (supra)* in which the court held that right to office of a mahant is personal and cannot be claimed after the death of the plaintiff. In my considered opinion, this case is also not applicable to the facts of the present suit as the son of the deceased plaintiff is not claiming a rights to the office held by the deceased plaintiff which is personal in nature but only seeks protection from forcible dispossession.

16. While adjudicating upon an application under Order XXII Rule 3 CPC, the merits of the suit cannot be decided. Only question to be decided is whether the right to sue survives which for reasons mentioned above, is answered in affirmative. **Accordingly, the application under Order XXII Rule 3 CPC is disposed of as allowed.** Let amended memo of parties be taken on record.”



SUBMISSIONS OF THE PARTIES:

10. The petitioner has submitted that for consideration of the application under Order XXII Rule 3 of the CPC, the learned Trial Court ought to have considered whether the respondent could step into the shoes of the original plaintiff if the right to sue survives. For the consideration of the application, the nature of the suit, right of the nature of the person occupying the suit premises and the nature of the infringement should have been looked into by the learned Trial Court. The petitioner submits that the suit filed by the deceased plaintiff was personal in nature and the reliefs claimed thereof were also personal. It is vehemently urged that the suit premises could be occupied by the person who is acting in the capacity of a priest for their accommodation. The deceased plaintiff was requested to vacate the suit premises on 05.11.2018, which was not done and the deceased plaintiff and the respondent herein continued to stay illegally in the suit premises.

11. The petitioner submits that the suit was instituted by the father of the respondent herein was in his personal capacity, and after his demise during the pendency of the suit, the suit stands abated and could not be continued by the legal representatives of the deceased plaintiff. The petitioner vehemently urges that the deceased plaintiff resided on the suit premises as the licensee of the petitioner and it was not a leased or tenanted premise, and the right to sue cannot be passed on to the son, as the suit premises can be occupied only by the priest/Presbyter-in-Charge.



12. The petitioner has also alluded to Section 38 of the Specific Relief Act, 1963⁴ and emphasises on the fact that for an injunctive relief, one needs to necessarily show how they are entitled to that right and how the respondent herein has the right to be substituted in the suit in place of the deceased plaintiff. It would be apposite to reproduce Section 38 of the SRA below: -

“38. Perpetual injunction when granted.—

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.”

13. The petitioner invited reference to the decision in **Smt. Bhagwanti v. Sh. Kanshi Ram through Legal Heirs**⁵ passed by this Court and the relevant paragraph is reproduced below: -

“3. The present suit was a simplicitor suit for permanent injunction. The relief claimed was against the sole defendant Kanshi Ram to restrain him and his associates etc. from making any kind of interference in the construction work of the first floor of Shop NO.136, New Rajinder Nagar Market. New Delhi. According to the plaintiff the cause of action arose when the defendant started making interference in the construction work of the plaintiff in the suit property. His case was that he has sanction from the Municipal

⁴ SRA

⁵ RSA No. 152-158/2006 & CM No.1845/2009



Corporation of Delhi to carry out the construction and the interference by the defendant was unwarranted. Admittedly, the defendant had expired on 5.10.2003. It is clear from the pleadings that the cause of action has arisen in favour of the plaintiff and against the deceased defendant alone; the grievance of the plaintiff was against the defendant in his personal capacity. It can in no manner be said that the cause of action extended to his legal representatives. The findings of the Courts below calls for no interference. In 110(2004) DLT 662 Asha Batra Vs. Dharam Devi a similar question had arisen wherein also a Bench of this Court had held that a suit for injunction would come to an end on the death of the sole defendant as the plea of forcible dispossession set up by the plaintiff would become an illusion on the death of the said defendant.”

14. The petitioner also relies on the decision in **Gulzar Shah v. Sardar Ali Shah** and the relevant portion of the decision is reproduced below: -

“Sham Chand Giri v. Bhayaram Panday(1), undoubtedly dealt with a Hindu institution but it seems-to me that the principles therein enunciated are of universal application. It was there held that the right to an office such as mahant was a personal one and that on the death of the person claiming it that right came to an end. In the case before us it has been admitted in the pleadings, that succession to both these offices is not hereditary nor does it necessarily go from office-holder to his chela or disciple, but is dependent on an election by a specific body called the bhek. In these circumstances it is only the person duly elected who has any right to hold either of these two offices and his right is dependent entirely on his election. On his death succession opens out and is again dependent on the will of the electors, although I understand that the bhek is either bound to appoint one of the chelas or as a matter of fact does appoint one of those persons. In any event it seems to me that the right must be regarded as a strictly personal one and that, therefore, the present applicant Sher Muhammad cannot be regarded as the legal representative of the deceased Gulzar Shah entitled to continue either of these two appeals.”

15. *Per Contra*, learned counsel for the respondent submitted that his contention lies on two basic limbs. According to the respondent, petitioner/defendant No. 1 and defendant No. 2 have no legal



personality, and since they are not possessing any legal personality, they are complete strangers to the suit property. The second limb is that the respondent had filed a Writ Petition before this Court against the dis-connection of the electricity and the Writ Petition was allowed, however the same order was stayed in Letters Patent Appeal by this Court. Aggrieved of the order in the Letters Patent Appeal, the respondent filed a Special Leave Petition before the Apex Court and *vide* order dated 03.11.2023, the Apex Court had stayed the dis-connection of the electricity of the suit premises, where the respondent is residing. The respondent submits that he should not be dispossessed from the suit premises without the due process of law. He further submits that he has a daughter suffering from autism and his possession of the suit premises is being disturbed by the petitioner/defendant No.1 and defendant No. 2, hence the right to sue survives.

16. During the course of hearing, the petitioner submitted that they had filed an eviction suit against the original/deceased plaintiff, but the same was withdrawn upon the death of the original plaintiff.

ANALYSIS & DECISION:

17. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this Court finds that the impugned order passed by the learned Trial Court dated 27.01.2022 cannot be sustained in law and the present revision petition deserves to be allowed. The core question is as to when does a right to sue survives? Order XII Rule 1 of the CPC provides that death of plaintiff or



defendant shall not cause suit to abate *if the right to sue survives*. In the case of **Puran Singh v. State of Punjab**⁶, it was held by the Supreme Court as follows:

“4. A personal **action** dies with the death of the person on the maxim “**action personalismoritur cum persona**”. But this operates only in a limited class of actions ex delicto, such as **action** for damages for defamation, assault of other personal injuries not causing the death of the party, and in other actions where after the death of the party the granting of the relief would be nugatory *Girja Nandini v. Bijendra Narain*, [1967] 1 SCR 93. But there were other case where the right to sue survives in spite of the death of the person against whom the proceedings had been initiated and such right continues to exist against the legal representative of the deceased who was a party to the proceeding. Order 22 of the Code deals with this aspect of the matter. Rule 1 of Order 22 says that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. That is why whenever a party to a suit dies, the first question which is to be decided is as to whether the right to sue survives or not. **If the right is held to be a personal right which is extinguished with the death of the person concerned and does not devolve on the legal representatives or successors, then it is an end of the suit.** Such suit, therefore, cannot be continued. But if the right to sue survives against the legal representative of the original defendant, then procedures have been prescribed in Order 22 to bring the legal representative on record within the time prescribed...”

{Bold portions emphasized.}

18. Reverting back to the instant matter, it is an admitted fact that the deceased/plaintiff was initially appointed as resident priest to perform the religious services and work in the Church by the petitioner/defendant No.1 and it is also an admitted fact that petitioner/defendant No.1 had allowed the deceased to reside in the accommodation in the suit premises situated on the ground floor of the Church. It is also brought out that although, the deceased plaintiff *vide* letter dated 21.10.2000 to the then Bishop of Diocese of Delhi

⁶ (1996) 2 SCC 205



acknowledged that he would retire from the services in the month of March, 2001, yet later at the behest of the petitioner/defendant No.1, the services of the deceased/plaintiff as a resident Priest was extended from March 2001 to 2005 on an *ad hoc* basis.

19. To cut the long story short, as per the deceased/plaintiff since there was crisis in running of the affairs of the Church, he was further given an extension by the defendant No.3 to perform the religious services in the Church and accordingly retain the accommodation in the suit premises till 14.05.2018. The deceased/plaintiff was even thereafter given extension from 2001 till 14.05.2018 and as an incidental benefit of such engagement, he was allowed to retain the suit premises. It was only when he was intimated by the petitioner/defendant No.1 *vide* letter dated 14.05.2018 that his services were no longer required and a new Presbyter in-charge has been appointed, and then, called upon by the Bishop for Diocese of Delhi-CNI/ defendant No.2 *vide* letter dated 18.06.2018 to vacate the suit premises, and pertinently when the request of the deceased/plaintiff to provide alternate accommodation was declined on 05.11.2018, that he instituted the suit pending before the learned Trial Court.

20. A careful perusal of the averments in the plaint instituted by the deceased/plaintiff would show that he challenged the authority of petitioner/defendant No.1 as also defendant No.2 not only because his tenure was not extended to provide services as a religious priest in Church but also levelling allegations that he was being harassed at the instance of defendants No.1 and 2, claiming that he cannot be



dispossessed from the accommodation in the suit premises located inside the Church.

21. Having regard to the averments made in the plaint, as also the reliefs which are sought in the suit, as indicated hereinabove in paragraph (5), it is apparent that the deceased/plaintiff was appointed as a religious priest in the Church in his individual and personal capacity by petitioner/defendant No.1. He was also evidently allotted and allowed to retain the accommodation in the suit premises inside the church premises solely to facilitate him in discharging the religious duties in the Church. The nature of infringement of his legal rights, if any, which were claimed by the deceased/plaintiff, were personal to him and certainly not heritable. There is no gain saying that being appointed as Presbyter in-charge, certain qualifications and eligibility conditions were required, which decision was in the domain of petitioner/ defendant No.1 and defendant No.2.

22. Assuming for the sake of convenience that extension was granted from 2007 till 2018 by or on behalf of defendant No.3, yet also the legal right if any available to the deceased/plaintiff was personal right of action that died with his death and not transferable or heritable. In other words, the relief No. (ii) claimed by the deceased/plaintiff challenging the authority of the petitioner/defendant No.1 and defendant No.2 was essentially in nature of challenging the decision to terminate his services as religious priest of the church which died with his death. Insofar as relief No. (i) claimed in the plaint, in view of the fact that the deceased/plaintiff came to occupy the accommodation in the suit premises inside the Church at the



instance of petitioner/defendant No.1 and defendant No.2, it did not lie in his mouth to challenge their authority, power or title to the same.

23. The crux of the matter is that respondent i.e., the son of the deceased has neither any right nor entitled to become religious priest of the church and he cannot challenge the authority of the petitioner/defendant no. 1&2 to manage the affairs of the Church. Merely, because he had been performing services at the Church for long did not create any vested right in him to continue to perform such services either. Further, at the cost of repetition, the accommodation in the suit premises inside the Church was allotted to the deceased/plaintiff as an incidental benefit to enable him to perform services to the Church and the right to retain the accommodation not only expired when his services were dispensed with by appointing a new Presbyter in-charge but inevitably subsequent on his death. On the death of the deceased/plaintiff no right to sue survived in favour of the respondent merely because he has been residing therein along with his wife and an autistic child.

24. It is pertinent to mention that it was acknowledged by the learned counsel for the respondent that he is not claiming tenancy rights in the premises but only seeking to protect his possessory rights. If that is the case, he shall be at liberty to file a separate and appropriate suit so as to protect his possessory rights. At the cost of repetition, no hereditary rights are created in favour of the respondent so as to continue with the suit filed by the deceased/ plaintiff as the latter's successor or legal heir. We can refer to somewhat similar analogy in the context of right of a pujari to provide services in Hindu



Temples. In the case of **Radhey Shyam v. Kayastha Hitkarini Sabha**⁷, it was held that:

“16. Poojari or Archaka is a servant of the Shebait, and no part of the rights and obligations of the latter are transferred to him. When the appointment of a Purohit has been at the will of the founder, the mere fact that appointees have performed the worship for several generations will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priests.

40. This court vide its order dated 26.7.2004 while allowing the application for bringing the legal representatives of deceased appellant Radhey Shyam had left open the claim of shebait or Pujari to be decided at the time of final hearing of appeal. **Since appellant Radhey Shyam has died during pendency of appeal, therefore, after his death, cause of action does not survive for his personal claim as Pujari of the temple. His personal right extinguished with his death and does not devolve on his legal representatives. That being so, the appeal also abates.**”

25. Insofar the decision in the case of **Vinod kumar M. Malavia v. Maganlal Mangaldas Gameti**⁸ relied upon by the learned counsel for the respondent, it was a case of religious body of the Church which came for consideration in terms of the Bombay Public Trust Act, which is not the issue in the instant matter. The decision in the case of **Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadiya (deceased) through LRs**⁹ relied upon by the learned counsel for the respondents is also distinguishable, inasmuch as, it was a case where the defendant had died prior to filing of the suit and it was in such situation that an application under Order I Rule 10 of the CPC for impleading the legal heirs of the deceased-defendant was

⁷ 2006 SCC OnLine Raj 540

⁸ Civil Appeal Nos. 8800-8801/2013 decided on 30.09.2013

⁹ MANU/SC/1236/2017



allowed by the Court in a suit for setting aside the execution of the sale deed instituted by the plaintiff.

26. Insofar as the plea by the learned counsel for the respondent that even the Supreme Court in SLP No. 24472/2023 titled as **Deepak Martin Caleb v. Diocese of Delhi, Church of North India (CNI)** vide order dated 03.11.2023 has granted him relief in the nature of stay against disconnection of electricity, the same does not amount to determination of legal rights in the pending suit or for that matter, there is no determination that right to suit survived in his favour. The relief was probably granted by the Supreme Court on humanitarian grounds.

27. In view of the foregoing discussion, this Court finds that the impugned order dated 27.01.2022 thereby allowing application of the respondent under Order XXII Rule 3 of the CPC suffers from patent illegality and amounts to an erroneous exercise of jurisdiction. Accordingly, the present revision petition is allowed and the impugned order dated 27.01.2022 is hereby set aside and the suit of filed by the deceased/petitioner bearing CS SCJ No. 1005/2018 titled as Rev. John H. Caleb Vs. Dioceses of Delhi Church of North India (CNI) & Ors. abates meaning thereby it comes to an end and shall not be proceeded with further in the Trial Court.

28. A copy of this order be sent to the learned Trial Court for information and necessary compliance.

29. The present revision petition along with the pending application stands disposed of.

DHARMESH SHARMA, J.

MAY 21, 2024

Sadiq/ss