



2024 : DHC : 3854-DB



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

+ **FAO(OS) 67/2024 & C.M.Nos.27890-27894/2024**

K JEEVAN RITA MURTHY

..... Appellant

Through: **Mr.Upendra Pratap Singh, Advocate.**

versus

SARABJIT SINGH (SINCE DECEASED) & ANR.

..... Respondents

Through: **Mr.Udit Arora, Advocate for R-2.**

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Date of Decision: 10th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned judgement dated 15th January, 2024 passed by the learned Single Judge in CS(OS) No.1418/2010, whereby the application filed by the appellant for substitution as a legal representative of the deceased defendant (respondent no.2) was dismissed. The appellant further seeks to challenge the order dated 30th April, 2024 passed by the learned Single Judge in RP No.193/2024 in CS(OS) No.1418/2010, whereby the review petition filed by the appellant challenging the order dated 15th January, 2024 was also dismissed.

2. Learned counsel for the appellant states that the learned Single Judge erred in allowing the application being IA No. 6723/2022 filed by

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Mr. Ved Vyas on behalf of the alleged legal heirs for substitution as legal representatives of the deceased defendant without there being any proof of the same.

3. He further states that the learned Single Judge erred in dismissing IA No.19418/2022 filed by the appellant seeking her substitution as a legal representative of the deceased defendant by failing to consider that firstly, the appellant had already filed Test Case No.33/2023 seeking Letters of Administration in her favour on the basis of the Will executed by the deceased defendant and secondly, that the appellant had been living in the suit property with deceased defendant since prior to his death and has continued to live.

4. Having perused the paper book, this Court is of the view that the subject suit has been filed by the respondent no.1/plaintiff for recovery of possession of the suit property claiming himself to be the owner of the suit property by virtue of documents including a will dated 15th March, 1982 executed by the deceased defendant.

5. On the other hand, the appellant is claiming to have become the owner of the suit property on the basis of an unregistered will dated 08th November, 2021 executed in her favour by the deceased defendant. Thus, the appellant is claiming substitution as a legal representative of the deceased defendant as his legatee on the basis of a will whose genuineness is yet to be established and proved. **(Re: Section 213 of the Indian Succession Act, 1925).**

6. This Court is in agreement with the view of the learned Single Judge that impleading the appellant as a legal representative of the deceased defendant would change the nature of the suit from a suit for possession to a



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suit for determination of title *inter se* the appellant and deceased defendant's alleged legal heirs under Class-II, which would exceed the scope of the subject suit.

7. Consequently, the present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

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