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

% *Date of decision: 15th October, 2024*

+ **CM(M) 828/2022 & CM APPL. 54908/2023 & CM APPL. 59570/2023**

MANJU RANI

.....Petitioner

Through: Mr. Praveen Suri, Advocate.
(through V.C.)

versus

SHIV PROPERTY DEALER AND ANRRespondent

Through: Mr. P. Kumar, Advocate for LR No.
(ii) of respondent No.2.

+ **CM(M) 660/2023 & CM APPL. 52337/2023**

MANJU RANI

.....Petitioner

Through: Mr. Praveen Suri, Advocate.
(through V.C.)

versus

M/S SHIV PROPERTY DEALER AND ANRRespondents

Through: Mr. P. Kumar, Advocate for LR No.
(ii) of respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM(M) 828/2022

1. Petitioner is plaintiff before the learned Trial Court and has filed a suit seeking possession, permanent and mandatory injunction.
2. Such suit has been filed against two defendants viz. Shiv Property Dealer and Sh. Krishna Gopal Gupta.
3. According to Sh. Praveen Suri, learned counsel for the petitioner/plaintiff, M/s Shiv Property Dealer had been a sole



proprietary concern of Sh. Shiv Prasad who died on 03.11.2020, during the pendency of the suit.

4. The information in this regard was provided by his counsel who also sought time to provide the details of LR's of said deceased defendant.

5. Though the Death Certificate of late Sh. Shiv Prasad was submitted before the learned Trial Court, fact remains that there was no clue about his surviving LR's and, therefore, eventually, publication was carried out but since despite publication, nobody came forward, the plaintiff moved an application under Order XXII Rule 4A CPC seeking appointment of some designated official to represent the estate of deceased defendant No.1.

6. Order XXII Rule 4A CPC reads as under:-

4A. Procedure where there is no legal representative.—

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may be order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court—

- (a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and*
- (b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is*



willing to be so appointed and has no interest adverse to that of the deceased person.

7. Of course, the above said provision is discretionary in nature and it is up to the concerned Court to evaluate whether in the given circumstances, it thinks appropriate to appoint anyone or to proceed in the absence of the legal representative of any such deceased person.
8. In the case in hand, learned Trial Court came to the conclusion that since there was no legal representative left behind the above said deceased defendant No.1, the Court has a discretion to either proceed in absence of that person or to appoint the persons mentioned in the provision as representative of such deceased. The Court noticed that since despite making best possible efforts, it could not determine the details of any of the LRs of deceased Sh. Shiv Prasad, it did not choose to exercise its discretion in terms of Order XXII Rule 4A CPC and did not appoint anyone.
9. The grievance in the present petition is limited to the above said effect and it is prayed that one of the designated officials, as specified in the provision, be rather appointed.
10. It is submitted by Sh. Praveen Suri, learned counsel for the petitioner that the plaintiff has done whatever was within her power. She got the requisite publication done in the newspaper also but despite such publication, nobody came forward and, therefore, in such a situation, it was appropriate for the learned Trial Court to have, at least, appointed some officer of the Court to represent the estate of defendant No.1 so that, in the eventuality, ultimately, if there is a



decree in favour of the plaintiff and she is required to file any Execution Petition, she is not lost in lurch and her rights are not defeated on the premise that it is against dead person.

11. Such contention does not seem to be wholly correct.

12. The import of said provision is loud and clear. The court can even proceed further without appointing anyone. Such power vested in court shall not make the decree, at any subsequent stage, unenforceable.

13. However, in the case in hand, it is better to go to the other option, particularly, when the case is already fixed for hearing final arguments.

14. Naturally, Order XXII Rule 4A CPC would come into play only when the Court is faced with a situation, when there is no legal representative and the court cannot refuse to appoint someone merely because there is no such legal representative. Any person appointed under Order 22 Rule 4A CPC would merely be required to represent the estate of the deceased person and would facilitate and assist the Court in giving effect to the order passed or to be passed by the Court. Therefore, in my view, it would have been certainly better if the concerned official posted in the court of the learned Trial Court was to be appointed, instead of not appointing anyone at all.

15. As noted already, since the case is already at the stage of final arguments, nothing else is to be done and if this Court allows the



instant petition and directs someone to be appointed under Order XXII Rule 4A CPC, the plaintiff would merely be required to place on record an amended Memo of Parties to that effect and thereafter both the sides can address final arguments so that the suit, eventually, reaches its logical end.

16. Learned counsel for LR No.(ii) (Shiv Kumar Gupta) of respondent No.2 states that though he has no connection with the above said aspect but since in the present case, it is not clear whether the deceased defendant had left any estate as such, there was no occasion in appointing any such person under Order XXII Rule 4A CPC.

17. However, though the appointment is not obligatory and despite the fact that deceased defendant has not left behind any legal representative, the judgment or order of the Court would equally bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been made party to the suit, but, nonetheless, in order to ensure that there is no legal complication of any sort whatsoever in future, it would be appropriate to go for appointment under Order XXII Rule 4A CPC.

18. In view of the above discussion, the present petition is allowed. It is directed that the Reader of the concerned Trial Court shall be deemed to be appointed for the above said purpose i.e. to represent the estate of deceased defendant No.1 under Order XXII Rule 4A CPC.



This would be subject to condition that he/she has no interest adverse to that of the deceased person.

19. Let amended Memo of Parties, accordingly, be placed on record by the plaintiff before the learned Trial Court within one week from today.

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20. The present petition, too, has also been filed by the plaintiff who is aggrieved by order dated 17.04.2023 whereby her request seeking striking off the evidence of DW-2 and DW-3 from the record has been disallowed and her application has been dismissed.

21. The above said application was, admittedly, filed by the petitioner/plaintiff before the learned Trial Court in view of the liberty granted to her by virtue of order dated 29.03.2023 passed in CM(M) 526/2023.

22. Though, ideally speaking, since the liberty had been granted, the learned Trial Court should have heard the arguments and should have passed appropriate orders, the learned Trial Court seems to have restrained itself from doing so with a purpose. It noted that the case was already at the stage of final arguments and if after hearing arguments, it found that the testimony of said two witnesses i.e. DW-2 and DW-3 was irrelevant and beyond the pleadings, it could always exclude the same from the scope of consideration.

23. It was only for the above said reason that the Court refrained



from making any observation either way, with respect to the striking off the evidence of DW-2 and DW-3.

24. Since the case is already at the stage of final arguments, it will not be appropriate to ask the learned Trial Court to hear the above said aspect. This would, obviously, result in a piecemeal hearing of the matter.

25. The petition is, accordingly, disposed of with the direction that the learned Trial Court while hearing the final arguments, would keep the aforesaid observations, made by itself only, in mind and if it comes to the conclusion that the testimony of said two witnesses is not relevant or, for that matter, is beyond the pleadings, it would be competent to exclude the same from the scope of consideration.

26. Both the aforesaid petitions stand disposed of in aforesaid terms.

27. Since the case is already at the stage of final arguments and since it is apprised that this is one of the oldest cases pending in Delhi District Courts, learned Trial Court would make best endeavour to dispose of the suit as expeditiously as possible.

28. Needless to say, both the sides would render due assistance and cooperation to the learned Trial Court in this regard.

(MANOJ JAIN)
JUDGE

OCTOBER 15, 2024/st