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

% ***Date of decision: 18th July, 2024***

+ **CM(M) 2802/2024 & CM APPL. 35367/2024**

LAXMI RAJVANSH AND ANRPetitioners

Through: **Mr. S B Upadhyay, Advocate.**

versus

SHAMA

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners herein had filed an application under Order XXII Rule 3 of CPC read with Section 151 CPC praying therein that they may be impleaded as party after the death of plaintiff-Ms. Sarbati Devi, as they had become the owner of the property in question on the basis of one Will executed by her.
2. During course of the arguments, learned counsel for petitioner has, very fairly, admitted that based on the aforesaid Will, the petitioners herein have already filed a petition seeking probate and such petition is still pending adjudication in which the objection has also been filed by the opposite side.
3. Petitioners are seeking their substitution, merely, on the basis of the Will and admittedly, as on date, the genuineness of such Will is already under challenge in the aforesaid Probate Petition.
4. Moreover, after the death of plaintiff-Ms. Sarbati Devi, her surviving



LRs have already been brought on record.

5. When asked, Mr. Upadhyay also revealed that the petitioners herein have already filed a separate suit against such LR's and others. In such newly instituted suit, they are seeking declaration that they be declared owner of the property in question and be also declared entitled to recover the rent with respect to the above property.

6. Such suit is already pending before Competent Court and, in case, the petitioners feel that any urgent relief is required to be sought against such LR's or against any other person, they can always make appropriate request or prayer before the said Court.

7. Be that as it may, in view of the peculiar facts placed before this Court, the impugned order does not suffer from any illegality. The petitioners have to first establish their right and only thereafter they can seek their impleadment in the suit in question. Since, they have already filed independent suit seeking declaration and recovery of rent, it automatically means that they are yet to perfect their title.

8. Finding no merit in the present petition, the same is, hereby, dismissed in *limine*.

(MANOJ JAIN)
JUDGE

JULY 18, 2024/sw