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

+ **C.R.P. 277/2024, CM APPL. 56896/2024**

**YOGESH NARAIN GUPTA AND ORS** .....Petitioners  
Through: **Mr. Shubham Verma, Advocate.**

versus

**RAMESH CHANDR JAIN** .....Respondent  
Through: **None.**

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**ORDER**

**21.10.2024**

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**CM APPL. 56897/2024 (Seeking Exemption)**

1. Allowed, subject to just exceptions.
2. The application is accordingly allowed.

**C.R.P. 277/2024**

3. A Revision Petition under Section 115 the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the Revisionist (*defendant in the Suit*) to challenge the Impugned Order dated 10.07.2024 whereby the Application under Order XXII Rule 3 CPC has been allowed to substitute Rahul Jain as the legal heir of Ramesh Chandr Jain without dealing with the objections raised by the Revisionist/defendants.
4. The plaintiff had filed a *Suit bearing No. CS SCJ No.99067/16* titled as "*Ramesh Chandr Jain vs. Yogesh Narain Gupta & Ors.*" for *Declaration and Mandatory Injunction* in respect of the immovable property situated at 71, GB Road, Delhi and to *Declare the Will dated 15.08.1966 and all the*



*transactions done on the basis of the said Will including the Sale Deed as null and void.*

5. During the pendency of the Suit, plaintiff Ramesh Chandr Jain died on 21.08.2021. An Application under Order XXII Rule 3 CPC was filed on 15.10.2022 along with Condonation of Delay by Rahul Jain, claiming himself to be the Class I legal heirs of the deceased plaintiff. In view of the serious objections raised by the Revisionist/defendant as to the identity of the proposed LR, the Court asked for NOC of the remaining LRs of the deceased plaintiff and directed the remaining LRs to appear before the Court and to file *No Objection Certificate* in favour of the proposed LR Rahul Jain. Affidavits/*No Objection Certificate* were filed by Sh. Vinod Jain and Smt. Anju Jain stating themselves to be the other legal heirs of the deceased Ramesh Chandr Jain, but their signatures on the *No Objection Certificate* appeared to be doubtful. The Court, therefore, directed for appearance of these two LRs. While *Smt. Anju Jain* appeared through Video Conferencing, a video in a pen driver containing clip of Vinod Jain giving *No Objection* for the suit being continued by Rahul Jain, was submitted.

6. The learned Civil Judge allowed the Application under Order XXII Rule 3 CPC and impleaded Sh. Rahul Jain as the LR of deceased plaintiff without considering the objections raised by the defendant/Revisionist in his Reply, vide Order dated 10.07.2024.

7. Aggrieved by the Order of substitution, it has been *challenged on the ground* that Order XXII Rule 5 CPC mandates that in case a question is raised whether a person is the legal representative of the deceased, the question shall be determined by the Court. The Trial Court failed to deal with the objections of the Revisionist and also failed to consider the



continuous fraudulent actions pertaining to the suit property, while dealing with the Application for substitution of LR.

8. It is further stated that the Passport of Sh. Rahul Jain gives the name of his mother as Joyce Jain, but he claims in his impleadment Application that Smt. Anju Jain is the wife of deceased plaintiff, but no plausible inquiry or question has been put on this aspect about the names of the mother being different. There is also a difference of spelling in the name of deceased plaintiff in the Passport of Rahul Jain when compared to Title of the present case. These contradictions pertaining to the identity of Rahul Jain have not been considered. No reasons have been given while allowing the Application, which amounts to material irregularity and the impugned Order, is liable to be set aside. Reliance has been placed on Jaladi Suguna (Deceased) Through LRs vs. Satya Sai Central Trust & Ors. 2008 (7) SCR 734.

9. **Submissions heard.**

10. The perusal of the record shows that the Application under Order XXII Rule 3 CPC had been filed by Rahul Jain as the legal heir of the deceased plaintiff Ramesh Chandr Jain, for substitution. On the objection of the Defendant raising suspicion about the identity of the proposed legal heir, the Trial Court took on record not only the *No Objection Certificate*, but also the affidavits of the legal heirs. Smt. Anju Jain appeared through Video Conferencing, while the *No Objection* of the other LR Sh. Vinod Jain has been submitted in a pen drive. The affidavits of these LRs were also taken on record, wherein they had stated that they have *no Objection* to impleadment of Rahul Jain in place of deceased plaintiff.

11. The identity of Rahul Jain as LR is sought to be questioned *firstly*, on



the ground that there is a spelling difference in the name of father Ramesh Chandr Jain in the Title of the suit and his Passport. The *second ground* of challenge is that Smt. Anju Jain was the wife of deceased plaintiff (*who is the father of Rahul Jain*) as per the Affidavit, but in the Passport of Sh. Rahul Jain, the name of the mother has been mentioned as Joyce Jain.

12. These assertions do not have any merit for the simple reason that mere spelling difference in the name of deceased plaintiff in the title and Passport of Rahul Jain cannot be termed as a suspicious circumstance. There is no denial about him being the son of the deceased plaintiff. Likewise, mother of Rahul Jain may have been Joyce Jain, while Smt. Anju Jain has been stated as the wife of deceased plaintiff, but merely because the name of the mother is different, does not take away the fact that the Rahul Jain is the son of the deceased plaintiff Ramesh Chandr Jain.

13. It has also been argued on behalf of the Revisionist that the signatures on the Affidavit do not appear to be genuine and on perusal, appear to be different. Again, this contention is largely in the realm of conjectures and surmises and is not tenable.

14. Needless to say that in case the defendant feels that the Affidavit filed does not have the genuine signatures of the concerned party, he is at liberty to take appropriate remedy before the Trial Court. Furthermore, he is at liberty to question the identity of the substituted legal heir during the course of the trial.

15. There is no merit in the present Revision Petition, which is hereby dismissed.

**NEENA BANSAL KRISHNA, J**

**OCTOBER 21, 2024/va**