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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 08th October, 2024***
+ **FAO 157/2017 & CM APPL. 13690/2017**
KULDEEP SINGH & ORS

.....Appellant
Through: Mr. Naman Raj Thakur with Mr. Anuj
Kumar, Mr. Ranjan, Advocates with
Appellant No. 1 in person.

versus

ATTAR SINGH & ORS

.....Respondent
Through: Mr. Manish Vats with Mr. Yogender
Saini, Mr. Nagmani Kumar, Mr.
Rupendra, Mr. Sumit Kumar, Mr.
Anup Kumar Mishra and Mr. Amit
Gupta, Advocates for LR's of R-1.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. Appellant had filed a suit seeking partition, possession, rendition of account and permanent injunction.
2. The above said suit was filed on the original side of this Court but with the change in pecuniary jurisdiction, the suit, eventually, got transferred to District Courts.
3. Defendant No. 1-Sh. Attar Singh, died on 17.02.2015 and after the case was transferred to District Court, applications were moved from the side of plaintiffs to bring on record his LR's and to set aside the order of abatement of the suit *qua* defendant No.1.



4. Both the above said applications have been dismissed by order dated 23.03.2017, which is impugned in the present appeal.
5. During course of the arguments, when asked, learned counsel for respondent No. 1 stated that though no justifiable reason had been assigned seeking condonation of delay in moving the above said application, he states, on instructions that he would have no objection if the appeal is allowed and the appellant/plaintiff is permitted to bring on record the legal representatives of deceased defendant No.1- Sh. Attar Singh.
6. This Court is mindful and cognizant of the fact that it is a partition suit and during the relevant period, due to change in pecuniary jurisdiction, the suit got transferred and, therefore, it might be one of the reasons for not moving the application within the stipulated period.
7. Undoubtedly, the factum of the death of defendant No. 1 was very much within the knowledge of the plaintiff, being a close relative but keeping in mind the overall facts and circumstances of the case, the nature of the suit which had been filed by the plaintiff and also keeping in mind the gracious concession given by learned counsel for respondent No.1, the present appeal is allowed and, consequently, while setting aside the order of abatement, the LR's of the deceased defendant No. 1-Sh. Attar Singh are permitted to be brought on record.
8. The plaintiffs also seem to be guilty of laches and inaction. Though the entire blame has been attributed by them to their counsel and, though, surprisingly, the same counsel had moved those applications before the learned Trial Court seeking impleadment of such LR's, it will be appropriate to impose cost upon them. The appellants are, accordingly, burdened with cost of Rs. 25,000/- which shall be paid to LR's of respondent No. 1/their



counsel on the date when the above said suit is taken up by the learned Trial Court in terms of the present order.

9. The suit in question i.e. CS No. 501/2016 stands restored to its original number and the parties are directed to appear before the Court of learned Principle District and Sessions Judge, North East District on 22.10.2024 at 2:00 P.M.

10. During course of arguments, it was also informed by both the sides that one other family member Mr. Balraj Singh (defendant No. 4 in the present suit) has also filed a separate suit (CS No. 75/2017) seeking partition and is seeking the same relief and such suit is pending adjudication before the Court of Ms. Manu Vedwan and is now fixed for 03.12.2024.

11. Learned Principle District and Sessions Judge, North East District, is requested to keep the above said aspect into consideration and in order to avoid any kind of conflicting orders, the present suit may also be allocated to the same Court i.e. Court of Ms. Manu Vedwan where a connected suit seeking partition between the same parties is pending consideration.

12. Appeal stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 8, 2024/sw