



2025:DHC:9919-DB



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

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Judgment reserved on: 29.10.2025

Judgment pronounced on: 13.11.2025

+ **FAO (OS) 76/2024, CM APPL. 31731/2024 & CM APPL. 31733/2024**

MEENAKSHI MALHOTRA

.....Appellant

Through: **Mr. Akshay Makhija, Sr. Adv.
along with Ms. Seerat Deep
Singh, Adv.**

versus

**G.L. TANDON (SINCE DECEASED THROUGH LRS) &
ORS.**

.....Respondents

Through: **Mr. Udit Chauhan and Ms.
Harshita Saxena, Advs.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

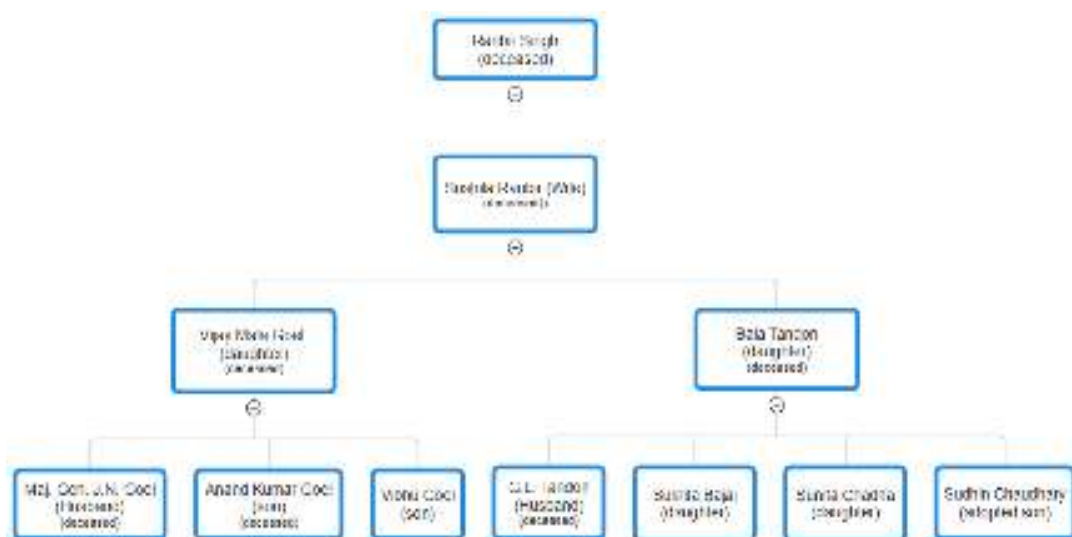
1. The issue that arises for consideration in the present Appeal is whether an applicant seeking impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] read with Section 151 of the CPC, who asserts title or proprietary rights by virtue of a decree of this Court and/or by succession under a testamentary disposition of the decree-holder, ought to be permitted to be added as a party to pending consolidated proceedings, namely a partition suit and a connected probate/test case, notwithstanding the objections raised on grounds of delay, pendency of litigation under the doctrine of *lis pendens*, and/or alleged abatement of proceedings.



2. The present Appeal assails the correctness of the order dated 29.02.2024 [hereinafter referred to as “Impugned Order”] passed by the learned Single Judge in CS(OS) No.98/1998 & TEST.CAS. No.17/2005, whereby I.A. No.24024/2023 filed by the present Appellant under Order I Rule 10 of the CPC seeking impleadment as a party in CS(OS) No.98/1998 was dismissed. The Appellant seeks setting aside of the Impugned Order and issuance of directions for her impleadment/substitution in the consolidated proceedings so that her asserted proprietary rights, flowing from the decree-holder Late Sh. Shoukat Rai Malhotra, may be adjudicated in her presence and to obviate the risk of conflicting decrees.

FACTUAL MATRIX

3. The relevant facts, as necessary for adjudication of the present Appeal, are briefly noted hereunder. For the sake of convenience, the parties are being referred to as they were arrayed before the learned Single Judge. For clarity, the genealogy of the parties is set out below before advertng to the rival contentions.





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3.1. The Plaintiffs instituted CS (OS) No.98/1998 seeking partition, rendition of accounts and permanent injunction in respect of property bearing No.B-7/111A Extension, Safdarjung Enclave, New Delhi [hereinafter referred to as “the Suit Property”]. The Plaintiffs relied upon a Will dated 28.10.1988 stated to have been executed by the Late Smt. Sushila Ranbir.

3.2. Parallely, probate proceedings were instituted concerning another Will dated 10.06.1989, also stated to have been executed by the Late Smt. Sushila Ranbir. The said proceedings were initially registered as Probate Case No.182/1997 and later renumbered as TEST.CAS. No.17/2005. By order dated 08.10.2001, CS (OS) No.98/1998 and TEST.CAS. No.17/2005 were consolidated for the purposes of recording evidence and final adjudication.

3.3. The Appellant's late husband, Sh. Shoukat Rai Malhotra, entered into Agreements to Sell [hereinafter referred to as “ATS”] dated 08.07.1997 and 21.07.1997 with Late Sh. Anand Kamal Goel and Late Smt. Vijay Mala Goel, respectively, in respect of different portions of the suit property, namely the Basement, Ground Floor, Second Floor and Terrace. He instituted a suit for specific performance of ATS dated 08.07.1997, being CS(OS) No.125/2005, wherein a consent decree dated 07.11.2006 was recorded in his favour, confirming his ownership in respect of the Basement, Second Floor and the Terrace above. Another suit for specific performance of ATS dated 21.07.1997, being CS (OS) No.292/2005, pertaining to the First Floor, was dismissed; RFA No.302/2018 arising therefrom remains pending adjudication.



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3.4. Given that the probate proceedings could operate *in rem* and potentially affect subsequent purchasers, Late Sh. Shoukat Rai Malhotra was impleaded as a respondent in TEST.CAS. No.17/2005 *vide* order dated 08.03.2006.

3.5. Sh. Shoukat Rai Malhotra passed away on 04.09.2020, leaving behind his wife, the present Appellant, and two sons namely, Sh. Sanjay Malhotra and Sh. Rohit Malhotra. A Will dated 15.03.2018 was executed by late Sh. Shoukat Rai Malhotra bequeathing his estate to his wife, the present Appellant. The said Will was accepted by his sons, who executed a Power of Attorney and supporting affidavits in her favour.

3.6. Subsequently, Sh. Anand Kamal Goel expired on 12.10.2023, leaving no Class-I heirs. The Appellant, asserting her derivative rights through late Shri Shoukat Rai Malhotra, filed I.A. No.24024/2023 seeking impleadment in CS(OS) No.98/1998 as a necessary and proper party. The learned Single Judge, by the Impugned Order dated 29.02.2024, dismissed the said application.

3.7. It is pertinent to record the procedural posture of the consolidated proceedings as directed in the Impugned Order dated 29.02.2024. In that order the learned Single Judge kept several interlocutory applications pending because substitution/impleadment of legal representatives of Shri Anand Kamal Goel had not been effected. The applications retained pending in the impugned order include:

i. I.A. No.6027/2023 — under Order XXII Rule 9 of the CPC read with Section 151 of the CPC filed by Late Sh. Anand Kamal



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Goel in TEST.CAS. No.17/2005 seeking setting aside of the abatement order dated 08.08.2022;

ii. I.A. No.18405/2022 — under Order I Rule 10 of the CPC read with Order XXII Rule 4 of the CPC & Section 151 CPC of the CPC filed by the Appellant in TEST.CAS. No.17/2005 seeking impleadment in place of Late Sh. Shoukat Rai Malhotra after setting aside the abatement order dated 08.08.2022;

iii. I.A. No.24069/2023 — under Order I Rule 10 of the CPC read with Order XXII Rule 3 of the CPC and Section 151 of the CPC filed by the Appellant in TEST.CAS. No.17/2005 for transposition as petitioner in place of Late Sh. Anand Kamal Goel insofar as title to the Suit Property is concerned and for leave to prove the Will dated 10.06.1989 of Late Smt. Sushila Ranbir.

3.8. The Respondents have also filed I.A. 25344/2023 under Order XXII Rule 4A of the CPC seeking appointment of an Administrator General / Court officer to represent the estate of Late Sh. Anand Kamal Goel. In the Impugned Order the learned Single Judge recorded that I.A. Nos.18405/2022, 24069/2023 and 6027/2023 could not be finally considered unless legal representatives of Sh. Anand Kamal Goel were impleaded; accordingly, those applications were kept pending to be taken up along with the application for substitution of the legal heirs of Sh. Anand Kamal Goel.

4. **CONTENTIONS OF THE APPELLANT**

4.1. Learned counsel for the Appellant submitted that the Appellant



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is the widow and sole beneficiary under the Will dated 15.03.2018 of Late Sh. Shoukat Rai Malhotra, who was himself arrayed as Respondent No. 4 in the connected TEST.CAS. No.17/2005. It was urged that the learned Single Judge erred in declining impleadment of the Appellant in CS(OS) No.98/1998 despite the Appellant being a derivative and necessary party whose proprietary interests are directly affected by the adjudication of the consolidated proceedings.

4.2. It was contended that during the pendency of the probate proceedings, Late Sh. Shoukat Rai Malhotra had moved I.A. No.1414/2005, seeking to be impleaded as a party in the testamentary matter, apprehending that Sh. Anand Kamal Goel, from whom his rights emanated, might compromise with the Respondents, leaving the subsequent purchaser unprotected. The said application was allowed by order dated 08.03.2006, recognising his status as a transferee *pendente lite* whose proprietary interest would be prejudiced by any adjudication in his absence.

4.3. It was further submitted that although Late Sh. Shoukat Rai Malhotra did not separately seek impleadment in CS(OS) No.98/1998, the partition suit was *inter se* among the family members of Late Smt. Sushila Ranbir, and his vendor, Sh. Anand Kamal Goel, was already contesting the same. Since Sh. Shoukat Rai Malhotra's rights flowed from Sh. Anand Kamal Goel, independent participation during his lifetime was unnecessary.

4.4. However, it was emphasized that Sh. Anand Kamal Goel unfortunately expired on 12.10.2023, leaving behind no Class I heir,



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and no steps were taken by the Respondents herein to bring on record any legal representative of the deceased Sh. Anand Kamal Goel. The Appellant, as the sole legal representative and successor of Late Sh. Shoukat Rai Malhotra, whose rights emanated from Sh. Anand Kamal Goel, thus became a necessary and proper party to protect her proprietary interests and to enable complete and effective adjudication of the consolidated proceedings.

4.5. It was submitted that Late Sh. Shoukat Rai Malhotra's ownership of the basement, second floor, and terrace above the second floor of the Suit Property stands crystallised under a consent decree dated 07.11.2006 passed in CS(OS) No.125/2005, and that by virtue of his Will dated 15.03.2018, the Appellant has succeeded to the said estate. The Will has been duly accepted by both sons of Late Sh. Shoukat Rai Malhotra, namely, Sh. Sanjay Malhotra and Sh. Rohit Malhotra, the former executing a Power of Attorney dated 20.01.2022 in favour of his mother and brother, affirming the bequest.

4.6. It was contended that the rejection of the Appellant's application on grounds of delay or pendency was misconceived. The right to implead is a procedural right intended to avoid multiplicity of proceedings and inconsistent decrees. The Appellant neither seeks to reopen settled issues nor to assert any fresh cause of action, but only to represent the estate of Late Sh. Shoukat Rai Malhotra, whose proprietary interest is already the subject matter of the pending proceedings.

4.7. Learned counsel submitted that the Appellant's application was



bona fide, supported by the requisite documents, including the Will, Power of Attorney, and contemporaneous affidavits, which collectively establish devolution of interest upon her. It was emphasised that her impleadment would neither alter the nature of the dispute nor cause any prejudice to existing parties, but would facilitate effective adjudication and prevent parallel litigation.

5. CONTENTIONS OF THE RESPONDENTS

5.1. *Per contra*, learned counsel for the Respondents opposed the present Appeal and supported the Impugned Order dated 29.02.2024, submitting that the learned Single Judge rightly declined impleadment since the Appellant neither satisfies the legal test of a “necessary” or “proper” party under Order I Rule 10 of the CPC nor can seek substitution of rights under the guise of impleadment. It was urged that the Appellant’s attempt is, in substance, one of substitution/devolution governed by Order XXII of the CPC rather than addition of parties under Order I Rule 10 of the CPC, and the statutory scheme of substitution cannot be circumvented by styling such relief as impleadment.

5.2. It was contended that CS(OS) No.98/1998 is a partition suit *inter se* the family members of Late Smt. Sushila Ranbir, concerning their respective shares under the Will dated 28.10.1988. The Appellant is neither a beneficiary under that Will nor a member of the family, and therefore has no *locus standi* to intervene in disputes purely *inter se* the co-heirs. Her presence is not required for effective adjudication of the partition issues.



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5.3. Learned counsel submitted that the Appellant's entire claim rests upon a consent decree dated 07.11.2006 passed in CS(OS) No.125/2005 and upon antecedent Agreements to Sell / Powers of Attorney said to have been executed by Late Sh. Anand Kamal Goel and Late Smt. Vijay Mala Goel. The Respondents have challenged the validity of the said decree on the ground that it was procured in collusion and by suppression of the pendency of CS(OS) No.98/1998 and the connected probate proceedings. An application seeking to set aside consent decree dated 07.11.2006 is already pending before the competent court. Until the validity of the said decree and the underlying instruments is conclusively determined, the Appellant cannot derive or assert any enforceable proprietary right in the suit property.

5.4. It was further urged that the alleged consent decree, even on its face, conflicts with the subsisting injunction order dated 08.10.2001 passed in CS(OS) No.98/1998 restraining the parties from transferring or creating third-party interests in the suit property. Any transactions or settlements entered into in breach of that order are voidable and cannot confer title upon the Appellant.

5.5. Learned counsel also emphasised that neither Late Sh. Shoukat Rai Malhotra nor the Appellant took steps for impleadment for nearly two decades despite being fully aware of the pending litigation. The Appellant's sudden attempt in 2023-2024, long after the death of Sh. Anand Kamal Goel on 12.10.2023, betrays a belated and tactical effort to revive a stale claim. The inordinate delay, it was urged, is fatal to the prayer for impleadment, particularly when the partition suit has



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substantially advanced and evidence has been recorded.

5.6. It was submitted that the Respondents have themselves moved appropriate applications, including I.A. No.25344/2023 under Order XXII Rule 4A of the CPC, seeking appointment of an Administrator General/Court Officer to represent the estate of the deceased Sh. Anand Kamal Goel. Hence, no prejudice has been caused to the estate and there was no necessity for the Appellant's parallel intervention.

5.7. Learned counsel lastly placed reliance on the doctrine of *lis pendens* embodied in Section 52 of the Transfer of Property Act, 1882, to submit that any transaction, decree, or arrangement purportedly entered into during the pendency of CS(OS) No.98/1998 is subject to the final outcome of that suit and cannot confer any independent or overriding title. It was urged that the consent decree dated 07.11.2006 and the antecedent instruments on which the Appellant relies were all executed *pendente lite* and, therefore, are subservient to the adjudication of the partition proceedings. The Appellant, it was submitted, cannot invoke such documents to claim parity with parties whose rights and liabilities have crystallised over decades of litigation.

ANALYSIS & FINDINGS

6. This Court has carefully considered the rival submissions advanced by learned counsel for the parties and perused the record. The central issue that arises for determination is whether the Appellant, who asserts a derivative proprietary interest flowing from Late Sh. Shoukat Rai Malhotra, himself a transferee *pendente lite* and



respondent in TEST.CAS. No.17/2005, is entitled to be impleaded as a party in CS(OS) No.98/1998 under Order I Rule 10 of the CPC, notwithstanding the pendency of proceedings concerning her predecessor's transactions and the delay alleged by the Respondents.

7. It is an admitted position that Late Sh. Shoukat Rai Malhotra had been impleaded as a respondent in TEST.CAS. No.17/2005 pursuant to order dated 08.03.2006, recognising his status as a transferee *pendente lite* whose proprietary interests were liable to be affected by the outcome of the testamentary proceedings. The Appellant's claim flows directly from the said Late Sh. Shoukat Rai Malhotra, both by virtue of: (i) the consent decree dated 07.11.2006 in CS(OS) No.125/2005 declaring ownership of the basement, second floor and terrace above the second floor in favour of Late Sh. Shoukat Rai Malhotra, and (ii) his Will dated 15.03.2018, duly accepted by his two sons, whereby the Appellant has succeeded to the said estate. These instruments, read together, crystallise a derivative proprietary interest that stands directly and substantially affected by the adjudication in the pending consolidated proceedings.

8. Following the demise of Sh. Anand Kamal Goel on 12.10.2023, the Respondents moved I.A. No.25344/2023 under Order XXII Rule 4A of the CPC, seeking appointment of an Administrator General/Court Officer to represent his estate. That application is, as noted above, pending. Such an appointment, if effected, would provide formal representation of the estate; but it does not negate the Appellant's right to be present in the consolidated proceedings where her substantive derivative interest is directly in issue. The Appellant's



impleadment would, instead, facilitate a more complete and efficacious adjudication of rights that arise from transactions connected with the estate.

9. It also merits observation that during his lifetime, Late Sh. Shoukat Rai Malhotra did not seek impleadment in CS(OS) No.98/1998 for the evident reason that his rights in the suit property flowed from late Shri Anand Kamal Goel, who continued to be alive and represented his estate in those proceedings. Indeed, Late Sh. Shoukat Rai Malhotra was already a party (Respondent No. 4) in TEST.CAS. No.17/2005, wherein his proprietary interests as a transferee pendente lite were duly recognised. The present Appellant, being his widow and successor, has approached this Court for impleadment in CS(OS) No.98/1998 only upon the subsequent demise of Sh. Anand Kamal Goel, which has created a clear necessity to ensure that the estate from which her predecessor derived title is properly represented in the pending consolidated proceedings. This explanation adequately accounts for the timing of her application and dispels any allegation of delay or lack of diligence.

10. It is trite that the power of the Court under Order I Rule 10(2) of the CPC is wide and discretionary, to be exercised to ensure that all persons whose presence is necessary for a complete and effective adjudication are before the Court. The provision does not create substantive rights but facilitates their proper determination. The distinction between substitution of parties under Order XXII Rule 4 of the CPC and addition of parties under Order I Rule 10 of the CPC is well-settled. The former applies upon death of a party whose cause of



action survives; the latter applies where, independent of such event, a person's presence is necessary for effective adjudication of questions involved. The Appellant's claim falls within the latter category, as she seeks impleadment not *in substitution* of any deceased party but *in assertion* of derivative proprietary rights which cannot be adjudicated in her absence.

11. At this stage, it would be apposite to refer to Order I Rule 10(2) of the CPC and Order XXII Rule 4 of the CPC.

Order I Rule 10(2) –

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

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Order XXII Rule 4 –

4. Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.



(5) Where—

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application with the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

12. The learned Single Judge, in declining impleadment, appears to have been swayed by considerations of delay and pendency of ancillary proceedings. However, mere passage of time or pendency of collateral challenges does not, by itself, defeat a party's right to be heard where her legal interest is directly in issue. The Appellant neither seeks to reopen settled matters nor to disturb existing findings; she only seeks to participate in proceedings which, by their very nature, would otherwise bind her estate. The purpose of Order I Rule 10 of the CPC is precisely to prevent multiplicity of litigation and to avoid situations where a person directly affected by a decree is left remediless.

13. The apprehension that impleadment would prejudice the ongoing proceedings is unfounded. The Appellant's presence would, in fact, assist the Court in ensuring that any decree passed in the partition or probate matters comprehensively binds all persons claiming through or under the concerned estates. Her exclusion, on the other hand, would only invite future litigation and uncertainty.



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14. Further, as recorded above in Paragraph No.3.7, the consolidated proceedings are at the interlocutory / preliminary stage in the sense that several interlocutory applications (including the Appellant's own applications in the probate proceedings) were kept pending by the learned Single Judge in the Impugned Order dated 29.02.2024 because substitution/impleadment of legal representatives of Shri Anand Kamal Goel had not been effected. The operative portion of the Impugned Order expressly lists I.A. Nos.6027/2023, 18405/2022 and 24069/2023 as applications to be taken up along with any application for substitution of the legal heirs of Sh. Anand Kamal Goel. In that sense the partition/probate proceedings are at a stage where interlocutory matters are under active consideration rather than being finally adjudicated on merits after a full trial.

15. This procedural posture is material. It is further evident that in CS(OS) No.98/1998, only the affidavits of both the attesting witnesses have been filed on record, though said affidavits have not yet been tendered in evidence. The witnesses are yet to be cross-examined. Where the suit and the connected probate matter are at a preliminary / interlocutory stage and interlocutory applications (including substitution and abatement-related applications) are pending, the joinder of a person claiming a derivative proprietary interest does not, as a rule, occasion the kind of prejudice that might arise where proceedings are at an advanced stage and evidence has been concluded. Indeed, if the Appellant is not impleaded now, the very applications which the learned Single Judge held could not be decided without impleadment will remain in limbo, and multiplicity of



proceedings and piecemeal adjudications become a distinct and avoidable possibility.

16. The plea founded on the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 [hereinafter referred to as “TP Act”], also does not advance the Respondents’ case. The doctrine neither annuls a transfer made *pendente lite* nor prohibits the transferee from being heard; it merely subordinates such transfer to the result of the pending litigation. The Appellant, being a successor to a transferee *pendente lite*, is entitled to participate to the extent necessary to protect her interests, subject of course to the final outcome of the consolidated suits.

17. This Court wishes to observe that rival contentions as to the genuineness, validity or alleged forgery/collusion in relation to the consent decree dated 07.11.2006, or any antecedent instruments (including Wills, Agreements to Sell and Powers of Attorney), are contentious issues of fact. Those questions require evidence and are not to be conclusively determined on an interlocutory application for impleadment under Order I Rule 10 of the CPC. The narrow enquiry for present purposes is whether the Appellant’s presence is necessary or proper for effective adjudication; allegations of forgery, collusion or fraud shall be examined and decided in the course of the principal proceedings in accordance with law.

18. In the totality of circumstances, therefore, this Court is of the considered view that the Appellant’s impleadment was wrongly declined by the learned Single Judge. Her application under Order I



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Rule 10 CPC was bona fide, supported by documents evidencing devolution of interest, and squarely fell within the parameters warranting judicial intervention to avoid multiplicity of proceedings.

CONCLUSION

19. For the foregoing reasons, the present Appeal is allowed. The Impugned Order dated 29.02.2024 passed by the learned Single Judge in CS(OS) No.98/1998 & TEST.CAS. No.17/2005 is set aside.

20. I.A. No. 24024/2023 filed by the Appellant under Order I Rule 10 of the CPC stands allowed. The Appellant shall be impleaded as a party to CS(OS) No.98/1998 and TEST.CAS. No.17/2005.

21. Nothing stated herein shall be construed as an expression on the merits of the respective claims of the parties, which shall be adjudicated independently in accordance with law.

22. Pending applications also stand disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 13, 2025

s.godara/pal