



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

% *Judgment Reserved on: 11.12.2025*
Judgment pronounced on: 16.12.2025

+ **FAO 247/2025 & CM APPL. 55668/2025**

ANUPMA MITRA

.....Appellant

Through: Ms. Jasmine Damkewala and Mr.
Divyam Khera, Advocates.

versus

**AMIT MITRA (DECEASED) THROUGH LR PRERNA SEEMAR
KALRA**

.....Respondent

Through: Mr. Samman Vardhan with Mr. Shrey
Gupta, Ms. Khushi, Ms. Priyam
Tiwari, Ms. Anshika and Ms.
Rukhshaar Saifi, Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Order XLIII of the Civil Procedure Code, 1908 (the CPC) has been filed by the defendant in CS No. 93/2020 on the file of the learned Additional District Judge, South District, Saket Courts, Delhi, aggrieved by the order dated 01.07.2025 by which an application under Order XXII Rule 3 and Rule 10 CPC filed by the respondent herein claiming to be



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the legal representative of the plaintiff based on a Will was allowed.

2. In this appeal, the parties herein shall be referred to as described in the plaint.

3. Brief facts necessary for the adjudication of the appeal are as follows: The plaintiff instituted CS No. 93/2020 seeking partition, rendition of accounts, and separate possession of the immovable property bearing B-77, Freedom Fighters Enclave, Neb Sarai, New Delhi, asserting an undivided 50% share in the said property, the remaining half being owned by his sister, the defendant. During the pendency of the suit, an interim order was passed restraining both parties from creating third-party interests or alienating the suit property. Subsequently, on 15.12.2023, the trial court passed a preliminary decree for partition directing partition of the property by metes and bounds and allowing one half share each to the plaintiff and the defendant.

3.1. During the pendency of the proceedings, the sole



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plaintiff died. An application under Order XXII Rule 3 read with Rule 10 CPC was filed by the respondent herein seeking substitution. According to her, the right to sue has survived and that she should be brought on record as the plaintiff's legal representative relying on a registered Will dated 11.11.2022, by which the plaintiff bequeathed his 50% share in the suit property to her. She also relied on an Agreement to Sell dated 06.09.2021, under which the plaintiff is stated to have agreed to sell his share in the property to her for consideration, which she claimed have been paid.

3.2. The defendant opposed the application by contending that she was the sole legal heir of the plaintiff, who died unmarried and issueless. She alleged that the documents relied upon by the applicant/respondent were not genuine and had been obtained when the plaintiff was seriously ill and vulnerable. She referred to a handwritten note dated 23.12.2023, said to have been written by the plaintiff in hospital, in which he expressed that he did not wish



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to continue the litigation and that he was under pressure from the applicant and others. The execution of the Will was denied.

4. The trial court *vide* the impugned order allowed the application for substitution by holding that it was sufficient for the applicant/respondent to show a *prima facie* case to represent the estate of the deceased. The trial court treated the registered Will, placed on record as adequate for substitution. Aggrieved, the defendant has come up on appeal.

5. It is submitted by the learned counsel for the defendant/appellant that the trial court erred in allowing substitution merely on the basis of a registered Will without requiring the applicant to first prove its genuineness in accordance with law. She relies on the decisions in **Janak Datwani v. Anand Datwani, 2025 SCC OnLine Del 6796**, and **Dhani Ram (D) through LRs v. Shiv Singh, 2023 SCC OnLine SC 1263**, to contend that mere registration of a Will raises only a rebuttable presumption and, in the absence of probate or letters of



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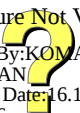
administration, no enforceable right can be claimed under the Will, particularly when its authenticity is being seriously disputed by the defendant. The Will relied upon is surrounded by suspicious circumstances, its execution has been specifically contested, and therefore the applicant could not have been treated as the legal representative at this stage.

6. *Per contra*, it is submitted by the learned counsel for the applicant/respondent quite emphatically and persuasively, that as the will in question is a registered will, no probate is required in Delhi. Therefore, there is no infirmity committed by the trial court calling for an interference by this Court, goes the argument.

7. Heard both sides.

8. Here, it would be apposite to refer to Order XXII Rule 5 of the Code of Civil Procedure, 1908, which reads thus:

“5. Determination of question as to legal representative.—Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question





shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.”

(Emphasis supplied)

9. In this context, I refer to the dictum in **Kunchikavu vs Kesabanayar, 1959 KHC 150:AIR 1960 Kerala 79**. The said case involved a suit for arrears of maintenance. Pending trial the sole plaintiff died and his son applied to get himself impleaded as a legal representative of his father on the strength of a will.

9.1. The application was opposed by the defendant, questioning the genuineness and validity of the will. The trial court allowed the application adding that the genuineness of the Will can be considered in the suit. In appeal, a learned single Judge of the High Court of Kerala, after referring to Order XXII Rule 5 CPC, held that the trial court had erred in permitting the son to be



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impleaded, without first deciding whether he was in fact the legal representative of his father. It was held that it is clear from the wording of Order XXII Rule 5, that when a question as to whether any person is or is not the legal representative of a deceased plaintiff arises, the court must first decide on it, and it is equally clear that the court must determine the question, before proceeding any further in the suit. Holding so, the order impleading the son of the plaintiff as a legal representative was reversed and the matter was remanded to the trial court for fresh disposal after due enquiry as contemplated under Order XXII Rule 5.(See also **Jaladi Suguna v. Satya Sai Central Trust**,AIR 2008 SC 2866;**Arangil Raghavan v. K. Sreedhara Panicker**,AIR 2001 Kerala 203, **Ajambi v. Roshanbi**, (2010) 11 SCC: 2010 KHC 4634,**R. Krsna Murtii v. R.R. Jagadesan**, AIR 2022 SC 3477: 2022 KHC 6736).

10. In the light of the procedure contemplated under Order XXII Rule 5, the trial court ought not to have allowed the



application for substitution without conducting an enquiry. Hence, the impugned order is set aside, and the matter remanded to the trial court, which shall conduct an enquiry as contemplated under Order XXII Rule 5 and pass orders accordingly.

11. The appeal is allowed as herein above stated. Applications, if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 16, 2025