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

Date of decision: 13th JANUARY, 2026

IN THE MATTER OF:

+ **CS(OS) 49/2019**

MRS. KRISHNA CHAWLA

.....Plaintiff

Through: Mr. Sacchin Puri, Sr. Adv., Mr. Puneet Sharma, Mr. Sonu Kumar, Mr. Utkarsh Soni, Mr. Sahil Sharma, Mr. Harshit Sharma and Mr. Priyanshu, Advs.

versus

SHRI ANIL CHAWLA AND ORS.

.....Defendants

Through: Mr. Samrat Nigam, Senior Advocate, Mr. Kunal Mittal and Mr. Sachin Aggarwal, Rishika Advs. for Defendant Nos.2(i), (ii) & (iii).

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

O.A. 50/2025

1. The present Chamber Appeal under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 has been filed on behalf of Defendant Nos.2(i), (ii) & (iii) against the Order dated 05.03.2025 passed by the Ld. Joint Registrar (Judicial) allowing the application being I.A. No. 12/2023 filed by Defendant Nos.3 & 5 under Order XXII Rule 3 of the Code of Civil Procedure, 1908 for transposing themselves as the LR's of Plaintiff.
2. Shorn of unnecessary details, the facts of the case indicate that the present Suit has been filed by the Plaintiff for partition and injunction in



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respect of property bearing No.A1/11, Krishna Nagar, Delhi and Properties bearing No.591-598, Jheel Khuranja, Delhi-110051. The Plaintiff is the mother of Defendant Nos.1, 3, 4, 5 & 6. Defendant Nos.2(i), (ii) & (iii) are daughter-in-law and children of deceased son of the Plaintiff Late Shri Gulshan Chawla.

3. It is the case of the Plaintiff that Late Shri Baisakhi Ram Chawla son of Late Shri Chhabil Dass Chawla and Late Shri Ram Lal Chawla (father of the husband of the Plaintiff Late Shri Bhagwan Dass) son of Shri Baisakhi Ram Chawla jointly purchased the Plot No.11, Block No.A1 measuring about 615 square yards of land situated at Krishna Nagar, Delhi 110051 vide a Sale Deed dated 29.06.1954. By the virtue of the said Sale Deed, both Late Shri Baisakhi Ram Chawla and Late Shri Ram Lal Chawla became the owner of the property, each having 50% share in the property and they divided their share measuring about 308 sq. yards each. It is stated that Shri Baisakhi Ram passed away on 03.07.1961 and all the legal representatives of Shri Baisakhi Ram relinquished their share in respect of the above property in favour of Shri Bhagwan Dass, who is the husband of the Plaintiff and son of Late Shri Ram Lal Chawla.

4. It is stated that Shri Bhagwan Dass passed away on 05.01.2004 leaving behind the Plaintiff as his widow, two sons i.e., the Defendant No.1 and Shri Gulshan Chawla and four daughters i.e., Defendant No.3 to 6 herein. It is stated that the son of Shri Bhagwan Dass i.e., Shri Gulshan Chawla passed away on 06.09.2018 leaving behind Defendant Nos.2(i), (ii) & (iii) herein as his LR's.

5. It is the case of the Plaintiff that Late Shri Bhagwan Dass died intestate without leaving any Will and, therefore, the parties to the Suit are



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entitled to have 1/7th share each in the Property bearing No. A1/11, Krishna Nagar, Delhi 110051. It is stated that the deceased Shri Bhagwan Dass was also the owner of the Properties bearing No.591-598, Jheel Khuranja, Delhi-110051. The said properties are in possession of different tenants and they are paying rent of their respective portions to the Plaintiff. It is stated that now Defendant Nos.2(i), (ii) & (iii) have colluded with other Defendants and are threatening to collect rent from the tenants, sell, dispose of, transfer and create third party interest in the aforesaid properties.

6. It is stated that Defendant Nos.2(i), (ii) & (iii) have also set up their claim on the basis of a Will dated 19.04.2003 of Late Shri. Bhagwan Dass (husband of the Plaintiff Smt. Krishna Chawla) wherein he had bequeathed his non-built up half portion of the Property bearing No. A1/11, Krishna Nagar, Delhi 110051 in favour of his brother Late Shri Gulshan Chawla. It is the case of Defendant Nos.2(i), (ii) & (iii) that the said portion of the property is not available for partition.

7. Defendant Nos.3 and 5 have also filed a written statement wherein they have denied the existence of a Will dated 19.04.2003 of Late Shri. Bhagwan Dass as claimed by Defendant Nos.2(i), (ii) & (iii) and they also claim 1/7th share each in the properties in question. Paragraph Nos.6 and 7 of the written statement filed by Defendant Nos.3 and 5 reads as under:

“6. The contents of Para 12 to 14 of the Plaint are wrong and denied to the extent that the defendants are threatening to dispose of the property or that the defendants have colluded with each other and are threatening to collect rent from the tenants, sell, dispose of, transfer and create third party interest in the aforesaid properties, as alleged or at all. It is stated that the defendants 2(i) to (iii), and not the



defendants 3 and 5, are without authority collecting the rents from the shops stated hereinabove, to the exclusion of all the other parties in the suit who are entitled to 1/7th share of the same. It is further stated that the defendants 2(i) to (iii) have been harassing, abusing and displaying aggressive and violent behaviour against the answering defendants 3 and other defendants and the Plaintiff, to oust them from the properties. It is stated that in the interest of things and to maintain the peace, and harmony in the family, the properties in question be partitioned.

7. The contents of Para 15 of the Plaint are not disputed to the extent that this Hon'ble Court restrain the defendants 2(i) to (iii) from collecting rent from the tenants of the property and from selling, transferring, creating any third party interest in respect of the properties in dispute.”

8. The Plaintiff passed away on 29.09.2022. Defendant Nos.3 & 5 moved an application being I.A. No. 12/2023 under Order XXII Rule 3 of CPC for transposing themselves as the LR's of Plaintiff. The said application has been contested by Defendant Nos.2(i), (ii) & (iii) stating that the deceased Plaintiff has made averments in the plaint that Defendant Nos.3 & 5 are in collusion with the remaining defendants and, therefore, they cannot be substituted in place of the Plaintiff in view of the averments made in the plaint. After hearing all the parties and in view of the fact that there was no objection from Defendant Nos.1, 4 & 6, the application was allowed by the Ld. Joint Registrar vide Order dated 05.03.2025 which is the subject matter of challenge in the present appeal.

9. The principle contention of learned Counsel for Defendant Nos. 2(i), (ii) & (iii) is that specific allegations have been averred by the Plaintiff



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(Now Deceased) against all the Defendants in the present Suit. Additionally, a specific prayer of mandatory and permanent injunction has been sought by the Plaintiff (Now Deceased) against all the Defendants. It is stated that in view of the specific allegations of collusion against Defendant Nos. 3 & 5 made by the Plaintiff, Defendant Nos.3 & 5 cannot be permitted to be substituted as the LRs of the Plaintiff.

10. *Per contra*, learned Counsel appearing for the Plaintiff places reliance upon Order XXII Rule 3 and Order I Rule 10 of CPC which are being reproduced as under:

“Order XXII Rule 3 of CPC

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.—(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Order I Rule 10 of CPC

10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been



instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”



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11. This Court has perused the plaint, written statements filed by Defendant Nos.3 and 5 and Defendant Nos. 2(i), (ii) & (iii). Defendant Nos.2(i), (ii) & (iii) have set up their claim on the basis of a Will dated 19.04.2003 of Late Shri Bhagwan Dass. Defendant Nos.3 and 5 have denied the existence of a Will dated 19.04.2003 of Late Shri. Bhagwan Dass as claimed by Defendant Nos.2(i), (ii) & (iii) and they also claim 1/7th share each in the properties in question.

12. The stand taken by Defendant Nos.3 and 5 in their written statement is that there is no conflict of interest between them and Defendant Nos.2(i), (ii) & (iii). The fact that allegations have been made by the Plaintiff in the plaint that all the Defendants are in collusion loses its significance in light of the stand taken by Defendant Nos.3 and 5 in their written statement.

13. It is well settled that in a Suit for partition, all the parties to the Suit are Plaintiffs. Plaintiff and Defendant Nos.1, 3, 4, 5 & 6 are claiming 1/7th share each in the properties in question. Defendant Nos.2(i), (ii) & (iii) are opposing to the partition and claiming the share on the basis of a Will dated 19.04.2003 of Late Shri. Bhagwan Dass. There was no conflict of interest between the Plaintiff and the Applicants.

14. The Apex Court in Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya, (2017) 9 SCC 700 has observed as under:

“16. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 CPC, in order to do justice between



the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice.”

(emphasis supplied)

15. Further, the Apex Court in Azgar Barid v. Mazambi, (2022) 5 SCC 334 has observed as under:

“13. We will first deal with the objection of the appellant that since Plaintiffs 4 to 8, whose claim was denied by the trial court and who had not challenged the same by way of appeal, are not entitled to relief in the second appeal. This Court in Bhagwan Swaroop v. Mool Chand [Bhagwan Swaroop v. Mool Chand, (1983) 2 SCC 132] and P. Nalla Thampy Thera v. B.L. Shanker [P. Nalla Thampy Thera v. B.L. Shanker, 1984 Supp SCC 631], has held that in a suit for partition, the position of the plaintiff and the defendant can be interchangeable. Each party adopts the same position with the other parties. It has been further held that so long as the suit is pending, a defendant can ask the court to transpose him as a



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plaintiff and a plaintiff can ask for being transposed as a defendant.”

(emphasis supplied)

16. Order XXII Rule 3 of CPC provides that if the sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, then the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

17. In view of the fact that it is well settled that in a Suit for partition, all the parties to the Suit are Plaintiffs and since the Plaintiff and Defendant Nos. 1, 3, 4, 5 & 6, all are claiming 1/7th share each in the properties in question, this Court does not find any reason not to permit Defendant Nos. 3 and 5 to be transposed as the Plaintiffs. In fact, it is well settled law that the Court has power under Order 1 Rule 10(2) of the CPC to transpose a Defendant to the category of a Plaintiff either suo-motu or on an application of any of the Defendants.

18. In view of the above, this Court does not find any reason to interfere with the Impugned Order passed by the Ld. Joint Registrar (Judicial).

19. Resultantly, the appeal stands dismissed.

CS(OS) 49/2019 & I.A. 1249/2019, I.A. 2997/2020, I.A. 10182/2024

20. List on 20.04.2026.

SUBRAMONIUM PRASAD, J

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S. Zakir