

26.04.2025

Present : Sh. Ravi Ranjan, Ld. Proxy counsel for proposed
LRs of deceased LR no. (b)/ Sh. Vishwanath of
deceased plaintiff (through VC).
Defendants no. 1 and 2 are ex-parte.
Sh. Hitesh Bhardwaj, Ld. Counsel for the defendants
no. 3 and 4.

1. Matter is fixed for order on application under Order XXII Rule 3 r/w Section 151 CPC filed on behalf of proposed LRs of deceased LR no. (b)/ Sh. Vishwanath of deceased plaintiff.
2. It is stated that on behalf of LR no.(b) / Sh. Vishwanath that during pendency of the suit, plaintiff Sh. Mahesh Chand Gautam expired on 23.02.2015 and before his death, he executed a Will on 17.04.2014 in favour of Sh. Dharmender and Sh. Vishwanath and both Dharmender and Sh. Vishwanath were impleaded as LRs of deceased plaintiff vide order dated 01.09.2016.
3. It is further stated that LR no. (b)/ Sh. Vishwanath expired on 15.06.2024 due to illness; that during his life time, Sh. Vishwanath had executed a Will on 19.04.2016 in favour of Sh. Ved Prakash Gautam, S/o Late Sh. Kulbhushan Shastri in respect of property bearing new no. (old number as plot no. 2 out of the khasra no. 38 situated in the village Khichripur, Ilaqa Shahdara, Delhi), E-391, Gali No. 7, East Vinod Nagar, near Hanuman

Mandir, Delhi-110091 (hereinafter referred to as “suit property”) whereby he bequeathed his movable and immovable properties including the suit property in favour of the applicant; that applicant is the cousin brother of the deceased Sh. Vishwanath being son of his aunt (bua) and as such applicant has become the owner of the suit property consequent to execution of the said registered Will; that applicant is entitled to the estate of the deceased LR of deceased plaintiff by virtue of the aforesaid registered Will and right to sue survives in favour of the applicant; that Sh. Vishwanath was a bachelor and he left no other legal heir except the applicant Sh. Ved Prakash Gautam, therefore, it is prayed that applicant may be permitted to be substituted in place of deceased late Sh. Vishwanath to pursue the present suit.

4. Reply to the said application has been filed on behalf of defendants no. 3 and 4. It is stated on behalf of defendants no. 3 and 4 that the present application is not tenable as same has not been filed by the legal representative of deceased plaintiff Sh. Mahesh Chand whereas same has been filed by the applicant only on the basis of Will dated 19.04.2016 which requires to be adjudicated by the court under the facts and circumstances of the case. It is further stated that order XXIII Rule 3 CPC reveals where a question arises as to whether any person or is not legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the court, hence in the

present case question arises whether a person can claim the successor right on the basis of a Will, who himself had invoked his right on the basis of a Will dated 17.04.2014 allegedly executed by deceased plaintiff Sh. Mahesh Chand.

5. It is further stated on behalf of defendants no. 3 and 4 that executant of Will dated 17.04.2014 deceased plaintiff Sh. Mahesh Chand alongwith his brother Sh. Suresh Chand both son of Sh. Rajan Lal Gautam had purchased the suit property on 16.11.1978 from Sh. S. K. Jain, therefore, deceased plaintiff was not the absolute owner of the entire property at the time of execution of Will dated 17.04.2014 because legal heirs of his brother Suresh Chand had statutory right over half of the property i.e. 75 square yards from the lineage of their deceased father Sh. Suresh Chand.

6. It is further stated that Will dated 17.04.2014 prima facie established as a defective document and subsequent Will dated 19.04.2016 itself defective as the executant of Will dated 19.04.2016 admitted had incurred his right by virtue of Will dated 17.04.2014.

7. It is prayed on behalf of defendants no. 3 and 4 that court may hold an enquiry to determine the question of legal representation as well as to adjudicate the Will dated 17.04.2014 as well as dated 19.04.2016 and to dispose of the application accordingly.

8. Submissions heard. Record perused.

9. The applicant Sh. Ved Prakash Gautam filed on record a copy of registered Will dated 19.04.2016 (registered on 19.05.2016) executed by the LR no. (b) / Sh. Vishwanath whereby Sh. Vishwanath bequeathed all his movable and immovable properties including the suit property in favour of Sh. Ved Prakash Gautam. Death certificate of late Sh. Vishwanath has been filed on record. In view of this, all right, title and interest of late Sh. Vishwanath in respect of the suit property devolved upon Sh. Ved Prakash Gautam.

10. As regards the contention of the defendants no. 3 and 4 that Will executed by late Sh. Mahesh Chand Gautam in favour of late Sh. Vishwanath was defective, therefore, Will executed by late Sh. Vishwanath in favour of applicant Sh. Ved Prakash Gautam does not confer any right on him, the court is of the opinion the said contention of defendants no. 3 and 4 is a matter of trial. Further, LRs of the plaintiff in order to establish their claims in the suit property will have to prove both the aforesaid Wills as per law.

11. Therefore, in view of Will dated 19.04.2016, applicant/ Sh. Ved Prakash Gautam represents the estate of deceased Sh. Vishwanath, thus right to sue survives in favour of applicant Sh. Ved Prakash Gautam. Therefore, **the application under Order XXII Rule 3 CPC stands allowed.** Sh. Ved Prakash Gautam is

CS No. 2383/16

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substituted as plaintiff in the present matter. Amended memo of parties is to be filed by the plaintiff.

12. Put up for filing of amended memo of parties / further proceedings on **02.06.2025**.

(SOMITRA KUMAR)
DJ-06, EAST/ KKD COURTS
DELHI/26.04.2025 ^(R)