

24.02.2021

Pr: Counsel Sh. Sudhir Gupta for plaintiffs, physically present.

Plaintiff No.4 Vikas, physically present.

Counsel Sh. Inderdeep Singh for D-5/Trust, physically present.

D-1 Dr. Pawan Lal, physically present.

In the present case on 08.03.2018 D-1 Dr. Pawan Lal had filed an application under Order I Rule 10 read with section 151 of CPC seeking impleadment of Pandit Chandra Haas Guru Mandir Trust as a co-defendant. This application was allowed vide order dt. 02.09.2019. Thereafter on 04.03.2020 D-5/Trust filed its written statement.

The contention being raised today by plaintiff's counsel is that the Trust (D-5) having stepped into the shoes of D-4/Late Shakuntla cannot take a different line of defence, other than the one taken by D-4/ late Shakuntla; that the D-5 Trust cannot file separate written statement of its own; that D-5/Trust has to adopt written statement of D-4/Late Shakuntla. In this regard he relies on the judgment of **Manju Parthi Vs Rohit Parthi**, 2007 (145) DLT 354.

On the other hand, counsel Sh. Inderdeep Singh submits that D-5/Trust was arrayed as co-defendant under Order I Rule 10 of CPC and not under Order XXII of CPC; that Order 1 Rule 10 (5) permits D-5/Trust to file its written statement; that in **Sumtibai & Others Vs Paras Finance Co.**, (2007) 10 SCC 82 it has been held that legal

representatives of deceased/defendant may file their own written statement. He furnishes on record copy of PAN Card of D-5 and copy of Income Tax papers of D-5 to show that D-5 is a legal entity and a registered Trust.

Plaintiff's counsel now submits that D-4/Late Shakuntla passed away on 24.02.2011 and Trust was created in 2004; that D-5/Trust came to be involved only because it was bequeathed the property and such bequeathment in terms of WILL could have taken place only on demise of Shakuntla Devi and not before. He further submits that the Supreme Court Judgment being relied by counsel Sh. Inderdeep Singh is in a different factual matrix; that D-5/Trust did not seek permission or pray for the relief to file written statement of its own; that the application of D-5/Trust was filed under the wrong provision of law as same ought to have been filed under Order XXII of CPC; that title of the application is not material, and what is material are the contents of application.

List for orders on this aspect on **16.03.2021**.

At this stage, (At 12.55 P.M.) Counsel Sh. Pankaj Garg for L.Rs of D-4 except L.R No. (d) has appeared.

M. P. SINGH
ADJ-03(East)
KKD Courts-24.02.2021