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CS 778/18

TRILOCHAN SAMAL Vs. KAMAL SINGH

03.11.2025

Present : Sh. Randeep Singh, Ld. Counsel for the plaintiffs
(through VC).
Plaintiff no. 2 in person.
Sh. Pankaj Chauhan, Ld. Counsel for defendant
no.1.
Defendants no. 2 and 3 are ex parte.

1. Matter is fixed for order on application under XXII Rule 4 r/w Section 151 CPC on behalf of the plaintiff.
2. It is stated that defendant no. 2/Sh. N.K. Samal expired on 13.12.2024, leaving behind legal heirs whose names are mentioned in para no. 3 of the application.
3. It is further stated that LR's of defendant no.2, i.e. plaintiff no. 1, and defendant no. 3 are already parties to the suit and one of his legal heirs/Sh. Narender Samal had already expired prior to the death of defendant no.2/Sh. N.K. Samal leaving behind legal heirs i.e. his wife and two daughters whose names mentioned in para no. 3 of the application. It is further submitted that the said remaining LR's of defendant no.2 are necessary party for proper adjudication of the present suit being class-I legal heir of the defendant no.2/Sh. N.K. Samal. Therefore, it is prayed that the present application may be allowed and LR's mentioned in the application may be substituted as defendants in place of deceased defendant no.2.

4. Defendant no. 1 opposed the instant application by filing reply to the same. It is submitted on behalf of defendant no. 1 that defendant no. 2/Sh. N.K. Samal expired on 13.12.2024, and the present application was filed on 22.04.2025, i.e., beyond the prescribed period, and it was not accompanied by an application for condonation of delay in filing the said application. It is further submitted that the present application is not maintainable as the proposed LRs are not the necessary parties. It is further submitted that defendant no.2 and the plaintiffs were in collusion, and therefore, defendant no. 2 and 3 never appeared in the present suit, and they were proceeded ex parte. It has further submitted that the plaintiffs have filed the present suit on the basis of a family settlement dated 10.09.2024, and the family member has not been made a party to the present suit; therefore, the said family settlement has no legal value. Therefore, it is prayed that the present application may be dismissed with exemplary cost.
5. Submission heard. Record perused.
6. As per averments in the plaint, the property in question, which is the subject matter of the impugned sale deed dated 30.06.2016, i.e. property bearing new no. B-83 (old no. B-144/B), Upper Ground Floor, Main Road, Kumaon Square, West Vinod Nagar-110092 is owned by plaintiff no.1 and he is in possession of the same. There is no averments in the plaint that other LRs of deceased defendant no.2/Sh. N.K. Samal (who are not party to the present suit) have any right, title or interest in the property in question or any of the said LRs. exercised any undue influence and fraud on the deceased

defendant no. 2 to get him to execute the impugned sale deed dated 0.06.2016 in favour of defendant no.1.

7. Furthermore, no written statement was filed on behalf of defendant no.2 either confirming or denying contention of the plaintiff, so there is no defence of defendant no.2 on record. Plaintiffs have alleged exercise of undue influence and fraud on defendant no. 2 by defendant no. 3 in collusion with defendant no. 1 and misrepresentation of facts by the said defendants before the concerned Registrar for getting registration of the said sale deed.
8. In view of the above facts, it is seen that the outcome of the present suit, either in favour of the plaintiff or against the plaintiffs, shall not adversely affect the rights of other LRs of the deceased defendant. 2 because as per the averment in the plaint plaintiff no. 1 is the owner of the property in question. Further, the judgment pronounced in the present suit shall have the same force and effect as if it had been pronounced before the death of the deceased defendant no. 2. Adjudication of dispute, if any, between the LRs of deceased defendant no. 2 inter se qua the property which is the subject matter of the impugned sale deed is not within the ambit of the relief prayed for by the plaintiffs.
9. Thus, considering all the facts and circumstances of the present suit, it is clear that the right to sue survives against the surviving/existing defendants alone and does not survive against the other LRs of the deceased defendant no. 2. Hence, there is no need to implead other LRs of the deceased defendant no. 2 as a party in the present suit. Accordingly, the application under Order

XXII Rule 4 r/w Section 151 CPC filed by the plaintiffs stands dismissed.

10. Put up for clarification on the application under Order VII Rule 11 CPC on **17.12.2025**.

(SOMITRA KUMAR)
DJ-06,EAST/ KKD COURTS
DELHI/03.11.2025 (s)