

DLST010082452022



IN THE COURT OF SH. SANJEEV KUMAR AGGARWAL
PRINCIPAL DISTRICT & SESSIONS JUDGE
SOUTH, SAKET COURTS, NEW DELHI

RCA DJ No. 48-2022
CNR No. DLST01-008245-2022

Dalip Singh Yadav
S/o Late Sh. Hariram
R/o 97D/9, GF,
Khanpur Village, New Delhi ...Appellant

vs.

1. **Dhanwant Yadav**
S/o Late Dayaram
2. **Ramchander Yadav**
S/o Sh. Dhanwant Yadav

Both R/o House No. 279,
Khanpur Village,
Main School Road,
New Delhi-110080

3. **Municipal Corporation of Delhi**
Through its Deputy Commissioner
Green Park, New Delhi

4. **The SHO**
P.S. Neb Sarai,
New Delhi-110080 ...Respondents

First date before this Court : 02.07.2026

Arguments heard on : 29.07.2026

Date of Judgment : 05.08.2026

ORDER

1. Vide this order I shall dispose of the application under Order XXII Rule 3 read with Section 151 CPC for impleadment of legal heirs of appellant.

2. It is stated in the application under Order XXII Rule 3 read with Section 151 CPC that appellant Dalip Singh Yadav had expired on 20/10/2022 and the right to sue survives in favour of the legal heirs namely Smt Santra Devi, wife of appellant; Smt Meenu Kumar; Smt Kamlesh Yadav; Smt Hemlata Yadav, all daughters of appellant and Sh. Suresh Kumar and Mahesh Kumar, both sons of appellant. It is stated that after the death of appellant Dalip Singh Yadav, the right to sue survives in favour of above said legal heirs, therefore, they be impleaded in place of deceased appellant Dalip Singh Yadav.

3. Alongwith aforesaid application, an application under Section 5 of The Limitation Act, seeking condonation of delay was also filed.

4. It is stated in the condonation of delay application that there are 20 days delay in filing the application under Order XXII Rule 3 read with Section 151 CPC, therefore, the delay be condoned.

5. Reply of the application has been filed by respondent no. 3. It is stated that application under Order XXII Rule 3 CPC is time barred. As per the details filed by

proposed LRs, the appellant had expired on 20/10/2022 and the present application had been filed on 04/02/2023 and the time limitation for filing of the application is 90 days, however, the present application had been filed after delay of 20 days. Accordingly, present application is not maintainable and liable to be dismissed being time barred.

6. No reply has been filed on behalf of respondent nos. 1 and 2 but written submissions have been filed on behalf of respondent no. 2 by Ld. Counsel in which it is stated that wife of appellant was suffering from ailments, however, no medical proof of the same has been filed to corroborate the said fact.

7. In respect of delay, Ld. Counsel for appellant submitted that the delay of 20 days was occurred as wife of appellant, who is senior citizen, was suffering from medical issues and some of the legal heirs were not in Delhi.

8. Ld. Counsel for respondents submitted that the reason for delay in filing of the application is not believable as the wife of appellant suffering from medical issues and some proposed LRs were out of station. However, no medical documents of the wife of appellant has been filed that she is ill nor any proof has been filed that other proposed LRs were not in Delhi.

9. I have heard the arguments on behalf of appellant by Sh. Naman Parashar, Ld. Proxy Counsel; Ms. Smita Rajgarhia, Proxy Counsel for respondent no. 2 and Sh. Rajiv Bhardwaj, Ld. Counsel for respondent no. 3/MCD and gone through the record of this case.

10. Order XXII CPC prescribes that where there are more plaintiffs or defendants than one, and any of them dies and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants. Further as per Order XXII Rule 3 CPC, if no application is made within the prescribed time limit under sub Rule (1), the suit shall abate so far as deceased appellant is concerned. As per Limitation Act, the period for filing the application for substitution of LRs is 90 days. Hence if no application has been filed within 90 days, then suit shall abate qua the deceased plaintiff as the case may be but as per Section 5 of The Limitation Act, the Court may condone the delay if the reasons for delay have been filed within the time specified.

11. Admittedly there is delay of 20 days in filing the application for condonation of delay. In this case appellant has taken the plea that the application could not be filed in time as Smt Santra Devi, one of the LR of applicant is a senior citizen was suffering from various diseases but neither in the application nor in the affidavit filed alongwith application, the age of the wife of appellant Smt Santra Devi is mentioned and no documents have been filed in support of the contention of Ld. Counsel for appellant that she was ill. Further no document has also been filed that some of the other Lrs of appellant are out of town but considering the fact that delay is just 20 days, taking liberal view in the

interest of justice, I allow the application and condone the delay subject to cost of Rs.20,000/- to be paid to respondent nos. 1 and 2.

Announced in the open
Court Today,
on 05.08.2026

(SANJEEV KUMAR AGGARWAL)
Principal District & Sessions Judge
South District, Saket Courts,
New Delhi