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CS DJ ADJ 308/19

JAI NARAIN AND ORS Vs. JAI SINGH AND ORS

20.05.2024

Present: Sh. Sudhanshu Tomar and Sh. Dharmender,
Ld. Counsels for Plaintiff.
Sh. D.V. Khatri, Ld. Counsel for Defendants
no. 1 to 10 through VC.
Sh. Karamveer Tokas, Ld. Counsel for LRs of
Defendant no. 7.
Defendants Jai Singh and Sanjeev Kumar in
person.

Matter is fixed for consideration on the
application. Ld. Counsels for the parties have submitted that no
further arguments are required to be addressed.

Put up for orders at 04:00 PM.

(DIVYANG THAKUR)
DJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
20.05.2024 (A)

At 04:00 PM

Present: None.

Vide the present order, I would decide the
application filed on behalf of Defendants no. 1 to 10 for recalling
the order dated 15.05.2023.

Vide order dated 15.05.2023, this Court had
allowed an application for impleadment of the LRs of Plaintiff
no. 3. The grounds as mentioned in the application are that the
Plaintiff has misled the Court and not considered the delay in

filing the application under Order XXII R 3 of CPC on behalf of the LRs of deceased Plaintiff. It is submitted that Sh. S.S. Dalal who has been recorded as appearing for Defendant no. 7 was in fact, appearing for Defendant no. 17 and therefore, the order cannot affect Defendants no. 1 to 10. The application has been opposed by the Plaintiff and reply has also been filed to the same.

A perusal of the file reveals that none had appeared for Defendants no. 1 to 10 on 15.05.2023. Application under Order XXII R 3 of CPC had been filed on 06.02.2023. By way of the present application which is in fact, an application for review under Order XLVII R 1 of CPC rather than an application under Section 151 of CPC and 153 of the CPC, the Defendants no. 1 to 10 wish to get set aside the order of the impleadment of the LRs of the Plaintiff no. 3 Bijender Singh.

The present application has been moved on 14.10.2023 i.e. after almost five months of the said order. No notice was required to be issued that the suit was already pending and the Defendants no. 1 to 10 were appearing through Counsel whose Vakalatnama is also on record. They did not appear on 15.05.2023 or on 31.08.2023. The typographical error that was present in the said order showing Sh. S.S. Dalal as appearing for Defendant no. 7 was corrected subsequently vide order dated 08.11.2023. The application under Order XXII R 3 of CPC was also accompanied by an application under Section 5 of the Limitation Act.

The present suit is a suit for partition and permanent injunction where each Plaintiff is a Defendant and each Defendant is a Plaintiff and therefore, hardly any prejudice can be caused to any party and rather, the suit for partition may not be even able to proceed in the absence of the LRs of any of

the Plaintiffs or Defendant. Therefore, I find no reason to recall the said order dated 15.05.2023. **Application is accordingly dismissed and disposed off.**

Matter to come up for further consideration on the pending application on **14.08.2024.**

(DIVYANG THAKUR)
DJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
20.05.2024 (A)