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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 299/2019 & I.A. No. 8194/2019

SH. ANEESH GOEL

.....Plaintiff

Through: Mr. Rajesh Rawal, Adv. (Mob:
9810081725)

versus

SMT. KHAJANI DEVI AND ORS.

.....Defendants

Through: Appearance not given on behalf
of defendants.

Right of D-3 to 7 to file WS was
already closed vide order dated
27.09.2019.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. GAGANDEEP
JINDAL (DHJS)**

ORDER
12.12.2025

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Proceedings are being conducted through hybrid mode.

**I.A. No. 41935/2024 (by plaintiff u/O XXII Rule 4(4) r/w
Section 151 CPC seeking exemption from bringing on
record LRs of deceased D-4) &**

1. Heard.
2. Ld. Counsel for plaintiff has relied upon the provisions of Order XII Rule 4 (4) CPC seeking exemption to impleading the LRs of defendant no.4. In the judgment Mata Prasad Mathur (Dead) By Lrs vs Jwala Prasad & Ors (2013) 14 SCC 722.

“9. It would appear from the above that the Legislature incorporated the provision of Order XXII Rule 4(4) with a specific view to expedite the process of substitution of the LRs of non-contesting defendants. In the absence of



any compelling reasons to the contrary the Courts below could and indeed ought to have exercised the power vested in them to avoid abatement of the suit by exempting the plaintiff from the necessity of substituting the legal representative of the deceased defendant-Virendra Kumar. We have no manner of doubt that the view taken by the First Appellate Court and the High Court that, failure to bring the legal representatives of deceased Virendra Kumar did not result in abatement of the suit can be more appropriately sustained on the strength of the power of exemption that was abundantly available to the Courts below under Order XXII Rule 4 (4) of the CPC.”

3. In the case of Mohd. Kaleemullah Vs. Mohd. Azizullah and Ors, 2005 SCC online AP 640

“6. Whenever a party to the suit dies during the pendency of the proceedings, corresponding obligation is cast upon the parties concerned, to bring the legal representatives of the deceased party, on record. Failure to do so would entail in abatement of the suit. Sub-rule (4) of Rule 4 of Order XXII CPC enables the Court, to relieve the plaintiff in a suit, from the obligation to bring the legal representatives of the deceased defendant on record, in case, such defendant remained ex parte. The basis for such a course is that when the party did not choose to respond to the summons issued by the Court during his lifetime, his estate cannot stand on a better footing, after his death.

7. In Mohammad Mustaqeem v. Aftab Ahmad, AIR 1983 All. 368, the legislative history of the provision was traced and it was held that the plaintiff in a suit cannot be compelled to bring the legal representatives of a deceased defendant in case, such defendant remained ex parte. In the instant case, the relief claimed in the present suit is the one for partition. It is deemed to be pending till a final decree is passed. In case, the legal representatives of the deceased-7th defendant, feel that



they are entitled to bring on record, it shall be open to them, at any stage, before the final decree is passed. As such, no prejudice can be said to have been caused to any one, in case, the petitioner is exempted from filing an application at this stage. On the other hand, it would accord with the letter and spirit of Rule 4(4) of Order XXII CPC.”

4. In this case also the right of defendant no. 4 to file the written statement was closed on 27.09.2019. The counsel for the plaintiff came to know about the death of defendant no. 4 to counsel for defendant no. 2 on 02.08.2024. Therefore, in view of the provisions of order XXII Rule 4 (4) CPC the plaintiff is exempted from bringing the LRs of deceased defendant no. 4 on record.
5. The captioned IA is disposed off accordingly.

I.A. No. 41936/2024 (by plaintiff u/O XXII Rule 4 r/w Section 151 CPC for bringing on record LRs of deceased D-1)

6. Ld. Counsel for defendant submits that the LR no. (i) of defendant no. 1 have been served through publication on newspaper on 30.10.2025. However, the date of publication in the e-copy of newspaper uploaded on server is not visible.
7. Hard copy of the newspaper has been produced, pursued and returned. Plaintiff is directed to file hard copy of newspaper within three days.
8. No reply has been filed on behalf of the LR no. (i) of defendant no.1. Therefore right of LR no. (i) of defendant no. 1 to file reply stands closed.
9. Heard. As per the captioned IA defendant no. 1 had died on 09.12.2023. The details of LRs of Defendant no.1 were provided on 09.05.2024. Defendant no.1 is survived by the LRs as mentioned in the captioned IA. The right



to sue survives against the LRs of deceased defendant no.1 as the suit is for inter-alia partition. It is submitted on behalf of other parties that they have no objections if the captioned IA be allowed.

10. In view of the above discussion, the LRs of defendant no. 1 as mentioned in the captioned IA are substituted in place of defendant no.1. Requisite entry be made in respect of LR of defendant no. 1.

11. Learned counsel for plaintiff submits that the amended memo of parties has already been filed.

12. The captioned IA is disposed off accordingly.

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13. Re-notify the matter for PE on **27th February, 2026.**

GAGANDEEP JINDAL (DHJS)
JOINT REGISTRAR (JUDICIAL)
DECEMBER 12, 2025/PU
Click here to check corrigendum, if any