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

+ TEST.CAS. 80/2021, I.A. 11848/2021, I.A. 2331/2022, I.A. 13436/2023 & I.A. 13437/2023

KASHISH TOMAR & ORS.

.....Petitioners

Through: Ms. Shobha Gupta, Ms. Sanskriti Shakuntala and Ms. Akshita Mishra, Adv.

versus

STATE & ORS.

.....Respondents

Through: Mr. Sahil Khurana, Ms. Anoushka Bhalla and Ms. Tracy Sebastian, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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03.04.2025

I.A. 16985/2022 (filed on behalf of the applicant seeking deletion the name of Ishan Tomar @ Harsh Tomar from the array of the parties)

1. Heard learned counsel appearing for the parties.
2. This is an application filed under Order I Rule 10(2) of the Code of Civil Procedure, 1908, for deletion of the name of respondent No.2 from the array of the parties on the ground of impersonation.
3. Ms. Shobha Gupta, learned counsel appearing for the petitioners, takes the Court through various documents and contends that there are discrepancies in the name of the testator, i.e., Jaiveer Singh Tomar. She further contends that in some of the documents relied upon by the other side, his name is recorded as 'Jaibeer Singh Tomar', whereas the testator used to



write his name as Jaiveer Singh Tomar.

4. More importantly, Ms. Gupta, learned counsel appearing for the petitioners, submits that there is a case of impersonation by respondent No.2, i.e., Harsh Tomar, who claims to be Ishan Tomar, son of Smt. Rupa, the divorcee of the testator. She further submits that under *bona fide* belief and on the basis of the active participation of respondent No.2 during the last rites of the testator, he was impleaded as one of the respondents.

5. Ms. Gupta, further, submits that respondent No.2 misrepresented himself, and the same, inadvertently, led to his impleadment in the present petition.

6. The aforesaid submissions are vehemently opposed by Mr. Sahil Khurana, learned counsel appearing for the respondents, who states that Ishan Tomar is the real son of the testator. Learned counsel also submits that Ishan Tomar is also known as Harsh Tomar and is one and the same person. According to him, the impleadment of respondent No.2 and his mother i.e., Smt. Rupa, is necessary for proper adjudication of the case.

7. I have heard learned counsel appearing for the parties and have perused the record.

8. The Court has considered the aforesaid rival submissions made by the parties and finds that the dispute in the instant application relates as to whether respondent No.2 herein, i.e., Ishan Tomar @ Harsh Tomar, is the real son of the testator.

9. The facts would indicate that the petitioners, in the instant petition itself, have stated that Smt. Rupa, the divorcee of the testator, had one son, Ishan Tomar. It is also seen that the petitioners have themselves impleaded respondent No.2.



10. Therefore, whether the present respondent No.2 is the real son of Smt. Rupa and the testator or some impersonator is a question of fact and must be determined after both parties are allowed to lead evidence, during the course of the trial.

11. Leaving the aforesaid issue open to be adjudicated after allowing the parties to adduce the evidence, at this stage, the Court dismisses the instant application.

12. Accordingly, the application stands disposed of.

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13. Let the matter be listed before the concerned Joint Registrar for taking further steps in accordance with extant rules on 19.05.2025.

APRIL 03, 2025/p/mjo

PURUSHAINdra KUMAR KAURAV, J

Click here to check corrigendum, if any