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

+ **CS(OS) 433/2020**

RAKESH KUMAR SAXENA

.....Plaintiff

Through: Ms. Preeti Singh & Mr. Sunklan
Porwal, Advs.

versus

DR. ASHOK SAXENA & ORS.

.....Defendants

Through: Mr. Manchit Singh, Adv. for D-1.
(Mob. No. 9810811180 & email ID:
saxsonslawco@gmail.com).

Mr. Saurabh Dev Karan Singh,
Adv. for proposed LRs Mr. Suneet
Lal and Ms. Ritu Saxena of D-2.

The name of D-3 was deleted from
array of parties vide order dated
01.08.2023 passed by the Hon'ble
Court.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. DEVENDER
KUMAR GARG (DHJS)**

ORDER

12.01.2024

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CS(OS) 433/2020;

**I.A. No. 12287/2020 (by plaintiff u/O XXXIX Rule 1 & 2
CPC) &**

**I.A. No. 9018/2021 (by plaintiff u/S 151 of CPC for
impleading the LRs of deceased defendant no.2 and to
take on record the amended memo of parties)**

1. Today the matter is fixed for order on enquiry in view of proviso (37) to Rule 3 of Chapter II of Delhi High Court (Original Side) Rules, 2018 in IA No. 9018/2021 moved on behalf of the plaintiff for impleadment of LRs of defendant no.2.



2. IA No.9018/2021 has been moved on behalf of the plaintiff *inter alia* submitting that the defendant no.2 Mrs. Promila Lal expired on 27.05.2021 leaving behind her children i.e. Ms. Ritu Saxena and Mr. Suneet Lal. Prayer has been made for impleadment of above said legal heirs of defendant no.2 in the present matter.
3. Reply to IA No.9018/2021 was filed on behalf of Mr. Suneet Lal i.e. son of deceased defendant no.2 *inter alia* stating that defendant no.2 Mrs. Promila Lal has executed a registered Will dated 17.06.2014 and as per the said Will, the defendant no.2 bequeathed her entire estate (present and future) upon the respondent/applicant except one immovable property, which had been bequeathed in favour of her daughter (sister of respondent). It is further mentioned that the interest of Late Mrs. Promila Lal being litigated in the present suit, has not been mentioned in the Will, however, there is a residuary clause in the Will which bequeaths anything and everything (including her present, past and future interest) to the respondent. It is further stated that the Will has been accepted by sister of the respondent and the respondent as well as his sister also obtained a probate certificate dated 19.07.2022 on the basis of said Will from Hon'ble High Court of Delhi in probate proceedings bearing Test. Cas. No. 49/2021 decided on 27.01.2022. The copy of the Will as well as the probate certificate are enclosed with the reply.
4. Separate reply to IA No.9018/2021 was filed on behalf of Ms. Ritu Saxena, daughter of defendant no.2, on the same lines as reply of Mr. Suneet Lal, wherein she admitted in respect of the Will dated 17.06.2014 as stated by Mr.



Suneet Lal in his reply. She has also admitted that probate of the Will was obtained in Test.Cas No.49/2021 decided by Hon'ble High Court of Delhi on 27.01.2022. She has further averred that she has no objection if Mr. Suneet Lal is substituted as sole LR in respect of defendant no.2 in the present matter. The undersigned has already recorded in order dated 19.09.2023 that due to inadvertent mistake, name of Mr. Suneet Lal has been mentioned in heading of reply filed by Ms. Ritu Saxena.

5. Reply to the reply of Mr. Suneet Lal was filed on behalf of the defendant no.1 wherein it is *inter alia* stated that deceased defendant no.2 had initially executed a Will dated 17.06.2014, however, soon thereafter son of the deceased defendant no.2 and his wife started harassing and torturing the parents compelling them to register a police complaint dated 6.6.2018 and also sending a legal notice to the son of deceased defendant no.2 complaint about the same and for their being forced by the son of deceased defendant no.2 to move out of the shared residence and also cancelling and rescinding the Will dated 17.06.2014. However, in the reply, contents of the reply of Suneet Lal to the extent of him being the son of defendant no.2 and his sister, being the only legal heirs of deceased defendant no.2, have been stated to be matter of record, stating that the same needs no reply.
6. During the hearing of IA No.9018/2021, Ld. Counsel for defendant no.1 had submitted that Mr. Suneet Lal solely cannot be legal representative of deceased defendant no.2 and he had also submitted that Will dated 17.06.2014 was cancelled and rescinded by the testator. Hence, in view of



provisio (37) to Rule 3 of Chapter II of Delhi High Court (Original Side) Rules, 2018, enquiry has been conducted by the undersigned and both the parties were given opportunity to file any document in respect of their pleadings.

7. On 21.11.2023, Ld. Counsels for parties had submitted that they had already filed their pleadings and documents and they do not wish to file any other document in respect of the inquiry and thereafter, the matter was adjourned for arguments on IA No.9018/2021.
8. I have already heard arguments from Ld. Counsel for plaintiff, Ld. Counsel for son and daughter of deceased defendant no.2 and Ld. Counsel for defendant no.1 and have perused the material available on record carefully. Ld. Counsel for LRs of defendant no.2 has relied upon judgments titled as “Arvind Purohit vs. Pankaj Purohit & Ors.” 2020(1) RLW 518 (Raj.) and “Tynala Musalayya vs. J. Mohanraj and others” 1982 SCC OnLine AP 102.
9. It is not disputed that Mr. Suneet Lal and Ms. Ritu Saxena are son and daughter of deceased defendant no.2. In his reply filed on behalf of Mr. Suneet Lal to IA No. 9018/2021, Mr. Suneet Lal has claimed himself to be sole LR of defendant no.2 on the basis of the Will dated 17.06.2014. Ms. Ritu Saxena has also not disputed the above said Will and also admitted that probate was issued on the basis of the said Will by Hon’ble High Court of Delhi in Test.Cas. No. 49/2021 on 27.01.2022. She has further averred in his reply that she has no objection if Mr. Suneet Lal is substituted as sole LR of deceased defendant no.2.



- 10.Ld. Counsel for defendant no.1 had contended that the said Will dated 17.06.2014 was cancelled / rescinded by the defendant no.2 and he had also disputed that Mr. Suneet Lal alone cannot be LR of deceased defendant no.2.
- 11.Perusal of the file would show that no document has been filed on behalf of defendant no.1 to show that the Will dated 17.06.2014 was cancelled or rescinded. Mr. Suneet Lal has filed copy of Will dated 17.06.2014 and copy of Probate Certificate dated 19.07.2022. Further, the defendant is brother of deceased defendant no.2 and it is not his case that he is LR of deceased defendant no.2.
- 12.Thus, in the opinion of the undersigned, Mr. Suneet Lal is LR of deceased defendant no.2 and he may be substituted as sole LR of deceased defendant no.2 for conducting proceedings in present matter.
- 13.In view of provisio (37) to Rule 3 of Chapter II of Delhi High Court (Original Side) Rules, 2018, let the matter be placed before Hon'ble Court for further directions on **23rd January, 2024.**

**DEVENDER KUMAR GARG (DHJS)
JOINT REGISTRAR (JUDICIAL)**

JANUARY 12, 2024/v

Click here to check corrigendum, if any