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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 743/2012 and IA Nos.13054-56/2014, 5132-5133/2017,
5528-5530/2017
MOHINDER NATH KAWLRA

..... Plaintiff

Through : None.

versus

POONAM KAWLRA & OTHERS

..... Defendants

Through : Mr.K.S.Mahadevan, Advocate for
defendant Nos.4 to 6.
Mr.Umesh Suri, Advocate for
defendant No.7.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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25.10.2017

During the pendency of this suit, the plaintiff, defendant No.8 and defendant No.9 had expired and hence applications under Order 22 Rule 3 and Order 22 Rule 4 of the CPC are stated to be pending.

There is another application under Order 9 Rule 7 of the CPC filed by the defendant No.7, also pending disposal.

The learned counsel for the plaintiff submit that the legal heirs of the defendant No.9 who were earlier proceeded ex-parte in this suit have since been served through registered posts sent through this Court as also at their email addresses. Affidavit of service is on the record.

The property in dispute admeasures 250 square yards bearing Municipal Nos.1606-1607, Madrasa Road, Kashmere Gate, Delhi –



110006, originally belonged to Hansraj Kawlra, who had five sons and three daughters. The deceased plaintiff (Mohinder Nath Kawlra) is one of the sons of Hansraj Kawlra, who had filed this suit for partition claiming that he was residing in America and when in March, 2012 he came to India he was not allowed to enter the suit premises by the defendants viz., his brothers, sisters and legal heirs of siblings.

It is alleged the plaintiff Mohinder Nath Kawlra expired on 09.04.2014 and the defendant No.7 - son of deceased sister of the plaintiff then moved this application under Order 22 Rule 3 of the CPC for transposing himself as the plaintiff in place of deceased plaintiff. The defendant No.7 however was proceeded ex parte in these proceedings on 08.10.2012 and has now on 05.04.2017 moved an application for setting aside the said order alongwith another application under Section 5 of the Limitation Act for condonation of delay.

The application under Order 22 Rule 3 of the CPC is based on the premise that the deceased plaintiff had executed a Will dated 20.11.2012 in his favour and the learned counsel for the defendant No.7/applicant further argues that dehors the Will dated 20.11.2012, the defendant no.7 still claims his right in the property as one of the legal heirs of Hansraj Kawlra and hence is entitle to a share in the property being son of the deceased daughter of Late Hansraj Kawlra.

The learned counsel for defendants No.4 to 6 opposes this oral plea of entitlement of defendant No.7 in the suit property as such submission is not a part of pleading/application. He also submits that



for deciding an application under Order 22 Rule 3 of the CPC, evidence needs to be recorded qua the fact that the defendant No.7 is a legal representative of the deceased plaintiff or not and relies upon various decisions.

The learned counsel for the defendant No.7/applicant seeks time to argue further.

List on 09.01.2018.

YOGESH KHANNA, J

OCTOBER 25, 2017

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