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

+ **TEST.CAS. 92/2025**

JYOTI SUBBA

..... Petitioner

Through: Ms. Isha Ghai, Adv.

versus

STATE (NCT OF DELHI) AND ORS.

..... Respondents

Through: Mr. Rajesh Agnihotri, Adv. f or
R-1 (appeared through VC) & Mr.
Shivendra Singh, Ms. Prakriti
Rastogi and Ms Aryama Singh
Rajput, Advs. for R-2 & 3.
(appeared through VC)
Mr. Hemant Kumar Yadav & Mr.
Shishir Chaturvedi, Advs. for
proposed respondent/Minu
Subba.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. SUMIT
DALAL, (DHJS)**

ORDER

16.02.2026

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**I.A.No.31443/2025 (under Order I Rule 10 CPC filed on
behalf of the applicant seeking impleadment as
respondent)**

1. Learned counsel for the defendant no.2 & 3 submits that he is not filing any reply to the captioned IA.
2. Learned counsel for the applicant submits that she does not wish to file rejoinder.
3. Accordingly, pleadings are complete.



4. Put up for orders at 4:00 pm.

**SUMIT DALAL, (DHJS)
JOINT REGISTRAR (JUDICIAL)**

AT 4:00pm.

I.A.No.31443/2025 (under Order I Rule 10 CPC filed on behalf of the applicant seeking impleadment as respondent)

5. The present application has been filed by the applicant, Ms. Minu Subba, under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), seeking her impleadment as a respondent in the above-captioned Testamentary Petition, which has been filed by the petitioner, Smt. Jyoti Subba, under Section 276 of the Indian Succession Act, 1925 (hereinafter "the Act"), for grant of probate of the registered Will dated 29.10.2015, purportedly executed by the deceased testator, late Shri Moni Kumar Subba.
6. I have heard learned counsel for the applicant in support of the application and learned counsel for the petitioner in opposition thereto. I have also perused the application, the reply filed by the petitioner, the main testamentary petition, and the documents placed on record.

BRIEF FACTS

7. The petitioner, Smt. Jyoti Subba, has filed the present testamentary petition seeking probate of the registered Will dated 29.10.2015 of late Shri Moni Kumar Subba,



a three-time Member of Parliament from Assam, who died on 27.05.2019 at Artemis Hospital, Gurugram. The Will, registered on 02.11.2015 before Sub-Registrar-V, New Delhi, bequeaths all movable and immovable properties of the testator exclusively in favour of the petitioner (the wife), with a further provision for devolution upon her legal heirs and successors, namely Respondent Nos. 2 and 3 (Chirag Subba and Roshni Subba), after the petitioner's demise. The testamentary petition arrays the State, the son and the daughter of the petitioner as respondents.

8. Vide order dated 16.10.2025, the Hon'ble Court issued notice in the present matter and directed publication of citations in the "*Times of India*" and "*Jansatta*" and called for a valuation report. The matter was thereafter listed before my predecessor, Ld Joint Registrar (Judicial)-07.
9. The applicant, Ms. Minu Subba, now seeks impleadment as a respondent, claiming to be the biological daughter of the deceased testator and the petitioner, born on 11.02.1988. She asserts that she is a Class-I legal heir under the Hindu Succession Act, 1956, and that no effective adjudication of the Will can take place in her absence.

RIVAL CONTENTIONS

10. The submissions of the applicant, in brief, are:
 - a. That she is the biological daughter of the testator, late Shri Moni Kumar Subba, and thus a Class-I legal heir



who would have succeeded to the estate in case of intestacy;

- b. That a Next of Kin Certificate dated 15.09.2021, issued after a detailed inquiry by the Deputy Commissioner, District Lakhimpur, Government of Assam, recognises her as one of the six next-of-kin of the testator;
- c. That she has already instituted CS(OS) 752/2022, titled *Minu Subba v. Jyoti Subba & Ors.*, before this Hon'ble Court, seeking partition of the testator's estate;
- d. That the petitioner has deliberately and with mala fide intent concealed her existence from the list of heirs/relatives filed with the testamentary petition;
- e. That she disputes the genuineness and validity of the alleged Will dated 29.10.2015 and intends to file detailed objections; and
- f. That in a probate proceeding, all legal heirs who would have succeeded on intestacy are necessary parties, and no effective adjudication can take place in her absence.

11. The petitioner, in opposition, submits:

- a. That the applicant is neither the biological nor adopted daughter of the petitioner or the testator, and the claim of being born to the petitioner on 11.02.1988 is absurd, as the petitioner was then a school-going minor of about 15–16 years studying in a Kendriya Vidyalaya;
- b. That the applicant has produced no documentary proof of her relationship with the testator;



- c. That late Shri Moni Kumar Subba was a member of the Limbu (Subba) Scheduled Tribe, and consequently, the Hindu Succession Act, 1956, does not apply by virtue of Section 2(2).
- d. That under Limbu customary law, the estate of a deceased male devolves only upon the son(s), and daughters inherit only in the absence of a son; since Respondent No. 2 (Mr. Chirag Subba, the son) survives, the applicant would have no intestate right even assuming she were a daughter;
- e. That the applicant is therefore a stranger with no interest, right or title in the estate, and is not a necessary or proper party within the meaning of Order I Rule 10 CPC; and
- f. Reliance is placed on **Krishna Kumar Birla v. Rajendra Singh Lodha, (2008) 4 SCC 300**, for the proposition that a person with no real interest, or merely a contingent interest, cannot be impleaded in a probate proceeding, and that busybodies and interlopers must be excluded.

ANALYSIS AND REASONING

A. The Applicable Legal Standard under Order I Rule 10 CPC

12. Order I Rule 10(2) of the CPC empowers the Court, at any stage of the proceedings, to order that *"the name of any person who ought to have been joined, or whose*



presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added." It is well-settled that a "necessary party" is one without whom no effective order can be passed, and a "proper party" is one whose presence enables the Court to effectively and completely adjudicate upon all questions involved in the suit.

13. At the stage of deciding an impleadment application, the Court is not required to conduct a mini-trial or to conclusively determine the rights of the person seeking impleadment. The test is whether the applicant discloses a prima facie interest, a plausible claim, or a semblance of right which, if established, would be directly affected by the outcome of the proceedings. If such a prima facie case is made out, the applicant is entitled to be heard; if not, she may be refused impleadment.

B. The Nature of Probate Proceedings and Citation of Interested Persons

14. A probate proceeding is a proceeding in rem. The Court must satisfy itself, before granting probate, that all persons who may have an interest in the estate have been given an opportunity to be heard. Section 283(1)(c) of the Act specifically empowers the Court to "*issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come*



and see the proceedings before the grant of probate or letters of administration." The expression "claiming to have any interest in the estate of the deceased" is to be interpreted broadly to include not only persons who would inherit on intestacy, but also persons who have a "possibility of an interest" in the estate.

15. Thus, it can be said that a duty is imposed on the petitioner to disclose all heirs and interested persons, and also confers on the Court a corresponding power to ensure that such persons are duly cited and heard.

16. The rationale is plain. If a probate is granted without citation of a person who had an interest in the estate, the grant itself may be vulnerable to revocation under Section 263 of the Act. It is therefore in the interest of all parties, including the petitioner, that the proceeding be complete and that all interested persons be before the Court.

C. Dealing with Krishna Kumar Birla v. Rajendra Singh Lodha, (2008) 4 SCC 300

17. The petitioner places heavy reliance on the judgment of the Hon'ble Supreme Court in **Krishna Kumar Birla v. Rajendra Singh Lodha, (2008) 4 SCC 300**, for the proposition that a person without a "caveatable interest" cannot be permitted to intervene or oppose probate, and that the right to enter a caveat cannot be bestowed upon a busybody or interloper.



18. I have carefully considered this judgment. The context of **Krishna Kumar Birla (supra)** was markedly different. The question in that case was whether executors under a prior will of the husband had a caveatable interest in opposing the probate of a subsequent will executed by the wife, in a case involving the vast Birla industrial empire. The Hon'ble Supreme Court did not lay down a rule that would exclude a person who claims to be a natural daughter and legal heir of the testator from the probate proceedings. On the contrary, the judgment itself recognised that the expression "*caveatable interest*" should be understood in the context of the statute and the facts of each case, and that a person who can challenge a rival will or who has a real interest in the estate has such an interest.

19. In the present case, the applicant does not claim as a stranger, a creditor, or an officious intermeddler. She claims as a biological daughter of the deceased testator, whose entire succession would be directly and substantially affected by the grant or refusal of probate. She is not, on any reckoning, a "*busybody*" or "*interloper*" within the meaning of **Krishna Kumar Birla (supra)**. Even if her claimed relationship is disputed, the claim itself, when read with the NOK certificate proceedings and the pending partition suit, discloses an intelligible and non-frivolous interest in the estate. The **Krishna Kumar Birla (supra)** judgment, far



from assisting the petitioner, actually supports the proposition that a person with a real and demonstrable interest in the outcome of the probate cannot be shut out. Accordingly, the reliance placed on this judgment by the petitioner is misconceived in the facts of the present case.

D. Dealing with Navneet Lal v. Gokul, (1976) 1 SCC 630 and Ved Mitra Verma v. Dharam Deo Verma, (2014) 15 SCC 578

20. The petitioner also relies upon **Navneet Lal v. Gokul, (1976) 1 SCC 630**, for the principle that a Will reflects the intention of the testator and such intention must be given its true effect. This is a well-established principle of construction of Wills. However, this principle operates at the stage of trial and final adjudication on the validity and construction of the Will. It has no bearing on the preliminary procedural question of whether a person claiming to be a legal heir should be impleaded as a respondent. Indeed, giving effect to the testator's intention requires the Court to first satisfy itself that the Will is genuine, and that satisfaction can only be reached after hearing all interested persons, including those who may oppose the grant.

21. Similarly, **Ved Mitra Verma v. Dharam Deo Verma, (2014) 15 SCC 578**, holds that exclusion of other children from a Will is not, by itself, a suspicious circumstance where the property is self-acquired, and



that the Will of the testator must prevail. Again, this principle concerns the substantive evaluation of suspicious circumstances at trial. It does not address whether a person claiming to be an excluded child should be denied the right to even appear in the probate proceedings to raise her objections. To use this judgment to deny impleadment would be to conflate the merits of the probate with the procedural question of party-array. That is impermissible at this stage.

E. On the Disputed Relationship and the Question of Proof

22.The petitioner has vehemently denied that the applicant is the daughter of the testator or of the petitioner. The petitioner has pointed out that, at the time of the applicant's alleged birth (11.02.1988), the petitioner was a school-going minor of about 15–16 years, studying in a Kendriya Vidyalaya, and that this makes the claim inherently incredible. These are serious assertions which deserve full consideration.

23.However, this consideration must take place at the stage of trial, not at the stage of impleadment. The question of the applicant's parentage is a contested question of fact which cannot be determined on the basis of affidavits and bare assertions in an interlocutory application. The applicant's claim, on the other hand, is not a bare and unsupported claim. The record shows that:



- a. An NOK certificate dated 15.09.2021, issued by the competent authority (Deputy Commissioner, District Lakhimpur, Government of Assam) after a detailed inquiry, recognises Ms. Minu Subba as one of the next-of-kin of the testator;
- b. The applicant has instituted CS(OS) 752/2022 before this very Court, seeking partition of the testator's estate, and that suit has been entertained and is pending; and
- c. A Title Suit No. 3/2025 has been instituted by Ms. Tara Subba (alleged daughter of the first wife) before the Principal District Court, Gangtok, also concerning the estate.

24. These facts, taken together, disclose at least a prima facie and plausible claim of interest in the estate. Whether the applicant ultimately proves her relationship and her right to any share in the estate is a matter for trial. At this stage, the threshold is not proof on a preponderance of probability; it is the existence of a credible and non-frivolous claim. That threshold is met.

F. On the Applicability of the Hindu Succession Act, 1956 vis-à-vis Limbu Customary Law

25. The petitioner has raised an important legal argument, namely, that the testator was a member of the Limbu (Subba) Scheduled Tribe, and that, by virtue of Section 2(2) of the Hindu Succession Act, 1956, the Hindu Succession Act does not apply to members of



Scheduled Tribes ^{times} the Central Government otherwise directs. Consequently, the petitioner argues, the applicant cannot claim to be a "*Class-I heir*" under the Hindu Succession Act, and under Limbu customary law, daughters do not inherit in the presence of a surviving son.

26. This argument, though weighty, raises a substantial and disputed question of law and fact, namely, (i) the applicability of the Hindu Succession Act vis-à-vis Limbu custom; and (ii) the content and proof of the Limbu custom of succession. These are questions that go far beyond the scope of an impleadment application and must be adjudicated after full hearing and evidence.

27. For the purposes of the present application, it suffices to note that the applicant claims an interest in the estate on the basis of her asserted relationship with the testator, and that the applicable law of succession, whether the Hindu Succession Act, Limbu customary law, or some other regime, is itself a contested issue. Until that issue is settled, it cannot be assumed that the applicant has no intestate right whatsoever. The petitioner's own testamentary petition acknowledges the existence of multiple branches of the family and multiple litigations concerning the estate, which only reinforces the need for the Court to have all claimants before it.

G. Balancing Prejudice



28.If the application is ~~not~~ allowed, the applicant will be added as a respondent; she will file her objections; and the matter will proceed to trial on all contested issues. The petitioner will suffer no prejudice, as all substantive questions, the validity of the Will, the testamentary capacity of the testator, the genuineness of the bequest, the applicability of the Hindu Succession Act or Limbu custom, the relationship of the applicant with the testator, will be adjudicated on merits after evidence.

29.If the application is refused, a person claiming to be the biological daughter and legal heir of the testator, who is recognised in an official NOK certificate, who has a pending partition suit concerning the same estate, and who disputes the genuineness of the Will, will be shut out from the probate proceedings without ever being heard on the merits. Any probate granted thereafter will be vulnerable to challenge for non-citation of a known claimant, and the proceeding may have to be reopened. This would not serve the interest of justice or the expeditious disposal of the testamentary petition.

30.The balance of convenience and the interest of justice clearly favour allowing the impleadment at this stage.

ORDER

31.For the reasons stated hereinabove, the application under Order I Rule 10 read with Section 151 CPC is allowed. The applicant, Ms. Minu Subba, is hereby



impleaded as a Respondent in the present Testamentary Petition.

32.The petitioner shall supply a complete set of the paper-book/petition to the applicant within two weeks from today.

33.The applicant shall be at liberty to file her objections/reply to the Testamentary Petition within four weeks from the date of receipt of the paper-book.

34.It is made clear that this order is confined to the question of impleadment of the applicant as a respondent. Nothing stated herein shall be construed as an expression of opinion on the merits of the testamentary petition, the genuineness or validity of the Will dated 29.10.2015, the question of the applicant's relationship with the testator, or the applicability of the Hindu Succession Act or Limbu customary law to the succession of the testator's estate. All such questions are left open for adjudication at the appropriate stage by the Hon'ble Court.

35.No order as to costs.

36.IA stands disposed of.

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37.As per previous office note, respondent no.2 & 3 served on 27.11.2025.

38.Valuation report of the property bearing Khasra



No.179/2/1 & 179/2/2. Village Sultanpur, New Delhi
has been filed on behalf of the Executive
Magistrate (Mehrauli).

39. Learned counsel for the respondent no.2 & 3 have
already submitted on 11.12.2025 that respondent no.2
& 3 do not wish to file reply/objections in the matter.
40. Learned counsels for the parties submit that the matter
may be placed before the Hon'ble Court on the date
already fixed and they will make appropriate
submissions before the Hon'ble Court.
41. At joint request, list the matter before the Hon'ble
Court for further directions on the date already fixed i.e.
19th February, 2026.

SUMIT DALAL, (DHJS)
JOINT REGISTRAR (JUDICIAL)
FEBRUARY 16, 2026/nk