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

+ CS(OS) 150/2010 & I.As. 5256/2013, 342/2014, 275/2018,
3501/2018, 8474/2022

KAMAL KUMAR NEWAR

..... Plaintiff

Through: Mr. Ashok Gurnani, Advocate.

versus

NAND KUMAR NEWAR & ORS.

..... Defendants

Through: Mr. Avneesh Garg & Ms. Srika
Selvam, Advocates for D-3 & 4.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **17.11.2022**

I.A. 8473/2022 (U/O XXII Rule 4(4) r/w Section 151 of CPC, 1908)

1. The present application under Order XXII Rule 4(4) read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the plaintiff seeking exemption from bringing on record the legal representatives of the deceased defendant No. 9-Padmavati Jhanwar.

2. It is submitted in the application that the defendant No. 9-Padmavati Jhanwar has expired on 27th August, 2021 at Howrah, West Bengal leaving behind the following persons, namely, Shree Kumar Jhanwar and Shri Rajesh Jhanwar, who are her two sons, Smt. Suman Toshniwal, the daughter and Shri Jai Prakash Kalanouria, husband of the pre-deceased daughter, Smt. Suman Toshniwal and Smt. Swati Kalanouria, the daughter of the pre-deceased Smt. Suman Toshniwal and Shri Ankur Kalanouria, son of the pre-



deceased Smt. Suman Toshniwal.

3. It is further submitted in the application that the defendant No.9 despite service did not appear or file the Written Statement and, therefore, her legal heirs may be exempted from being brought on record under Order XXII Rule 4(4) of CPC, 1908.

4. **Submissions heard.**

5. However, Order XXII R4(4) provides that if the Written Statement has not been filed, or even if filed but defendant has failed to contest and is ex parte the legal heirs of such defendant may not be brought on record. Since this is a Suit for Partition, it would be appropriate to bring the legal heirs of the deceased defendant No. 9.

6. Accordingly, the application is allowed with the directions that the legal heirs of the defendant No. 9 be brought on record.

7. It is submitted that all the legal heirs of the defendant No. 9 have already been served through publication despite which none has appeared on their behalf.

8. Let amended memo of parties be filed before the next date of hearing.

9. Application is disposed of.

I.A. 1880/2020 (U/O VI Rule 17 r/w Section 151 of CPC, 1908)

1. The present application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the plaintiff seeking amendment of the plaint.

2. By way of present application, the plaintiff wishes to take an alternate plea of adverse possession.

3. However, learned counsel on behalf of the plaintiff seeks leave to withdraw the present application without prejudice to his rights and with



liberty to file an appropriate application before the appropriate forum.

4. In view of the submissions made, the application is dismissed as withdrawn with the liberty as prayed for.

I.A. 4819/2018 (U/S 10 r/w Section 151 of CPC, 1908 by the defendant No. 1 for stay of the proceedings in Suit No. CS(OS) 150/2010) & I.A. 14798/2018 (U/S 151 of CPC, 1908 by the defendant Nos. 3 & 4 for consolidation of the present Suit with the Suit No. CS(OS) 362/2009)

List for arguments on 01st March, 2023.

NEENA BANSAL KRISHNA, J

NOVEMBER 17, 2022

S.Sharma