Gwalior, Dated : 14.07.2021

Heard through video conferencing.

Shri K.S. Tomar, learned Senior counsel with Shri J.S. Kaurav and Shri Anoop Gupta, Advocates for the petitioners.

Shri V.K. Baradwaj, learned senior counsel with Shri Rohit Batham, Advocate for respondents No. 1 and 2.

Shri Vijay Sundaram, learned Panel Lawyer for respondent/State.

With consent, heard finally.

Present petition has been filed challenging the order dated 01.02.2017 passed by the IV Civil Judge, Class-I, Gwalior, whereby the application filed by the petitioner for bringing the legal representatives on record on the basis of Will has been rejected.

It is alleged that plaintiff-Prakash Chaubey who is no more and one Suresh Chaubey filed a suit jointly against the respondents for declaration, title and permanent injunction with respect to the agricultural land as mentioned in para 2 of plaint on the allegation that land in dispute is of the ownership of the plaintiffs because their grandfather had purchased the land by a registered sale-deed dated 28.06.1944 from Balmukund Chhingamal Brahmin and now the defendants were interfering in the use and occupation of the land claiming their right on the suit property. The decree was obtained in

Civil Suit No. 47-A/2007 from Second Civil Judge, Class-I, Gwalior on 24.04.2009 as nullity against the interest of the plaintiff, therefore, the civil suit has been filed. The written statement was filed by the defendants No. 1 to 3 denying all the averments made in plaint and stated that the decree has not been obtained by playing fraud or misrepresentation. The plaintiffs are bound by the judgment and decree passed on earlier occasion. Petitioner No. 1 was appointed as a power attorney holder by document dated 31.12.2008 registered with the Sub Registrar Gwalior. During pendancy of the suit, Prakash Chaubey executed a Will dated 24.12.2007 with respect to movable or immovable property in favour of petitioner No. 1. After death of Prakash Chaubey on 10.01.2016, an application under Order XXII Rule 3 read with Section 151 of CPC for impleading him as a legal representative on the basis of Will has been filed. The reply to the aforesaid application was filed by the respondents taking a specific stand that the Will dated 24.12.2007 is a forged and fabricated document; therefore, petitioner No. 1 cannot be allowed to be impleaded in the suit. The learned trial Court without considering the relevant provisions of law rejected the application. It is alleged that the order passed by the learned trial Court is contrary to the provision of Order XXII Rule 1,3 and 4-A of CPC. It is submitted that by virtue of registered Will executed by plaintiff No. 1-Prakash Chaubey in favour of petitioner No.1, he has required the rights over the property in

question. Even otherwise, he is a legal representative in terms of Section 30 of the Hindu Succession Act, therefore, he should have been impleaded as one of the legal representatives of plaintiff No.1 and should be permitted to continue in civil suit proceedings. It is argued that Section 2(11) of CPC defines 'Legal Representative' which means that a person who in law represents the estate of a deceased person including any person who intermeddles with the estate of the deceased will be termed as a legal representative. The learned trial Court without considering the settled prepositions, has rejected the application. It is argued that once a person is claiming to be a legal representative of the deceased/plaintiff, then it is the duty of the Court to see whether he is one of the legal representatives or not; It is further argued that it is the duty of the Court to determine the question with respect to legal representatives in case there is a dispute or misunderstanding with respect to the same. The Court cannot deny in an arbitrary manner the application of legal representative. Besides the new provision of Rule 4-A of Order 22 of CPC which has been inserted by an amendment of the year 1977. It is not mandatory but can be constituted merely for discretionary as the language empowers in sub-rule 4-A of CPC which provides the procedure where there is no legal representative. The aforesaid aspect has not been considered by the learned trial Court and has rejected the application outrightly. Learned counsel for the petitioners placed reliance upon the judgment passed by the Hon'ble

Supreme Court in the case of **Jaladi Suguna (D) Th. Lrs vs Satya Sai Central Trust & Ors** reported in **AIR 2008 SC 2866**, wherein in similar situations the legal representatives on the basis of the Will were brought on record. It is argued that the aforesaid is just to avoid the multiplicity of the litigations. In such circumstances, the order passed by the learned trial Court is *per se* illegal.

Per contra, learned counsel for the respondents have vehemently opposed the contentions and supported the impugned order stating that the Will in question is forged and fabricated document as alleged in the reply, therefore, until and unless the Will in question is proved and a probate is obtained upon the same, no right accrues in favour of the petitioners. The learned trial Court has considered the aforesaid aspect to the case and rightly rejected the application. No illegality is found to have been committed by the learned trial Court. It is settled preposition of law that once a Will is disputed then the propounder of the Will is required to get a probate by initiating appropriate proceedings. In such circumstances, no illegality has been committed by the learned trial Court in passing the impugned order. They prayed for dismissal of the present petition.

Heard the learned counsel for the parties and perused the record.

From perusal of the record it is not disputed that petitioners were contesting the suit on the basis of power of attorney on behalf of

plaintiff No. 1. During the pendancy of the Civil Suit the plaintiff No.1 expired and he had executed a registered Will in favour of petitioner No. 1. The petitioner No. 1 filed an application to bring him on record as one of the legal representatives of late Prakash Choubey. The aforesaid application was rejected by the learned trial Court holding that the Will in question is a disputed Will as the same is being objected by the respondents, therefore, until and unless probate is obtained, no right accrues in favour of petitioner No.1.

The definition of "Legal Representatives" is required to be seen which is given under Section 2(11) of CPC which reads as under:-

> "Legal representative" as defined in Civil Procedures Code, under s.2(11), means a person who in law represents the estate of a deceased person and includes any person who intermeddles with The estate of the deceased and where the party sues or is prosecuted in a representative manner by the person to whom the estate is transferred upon the death of the party so suing or sued.
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> The definition is inclusive and broad in nature, not limited to legal heirs, but rather defines a person who may or may not be the heir, who is eligible to inherit the deceased's estate but who must represent the deceased's estate. This includes all heirs and individuals holding the assets either without ownership, even as executors even administrators of the deceased's estate. All such persons are covered by the expression "legal representative." If there are many heirs, then those in good faith are also entitled to represent the deceased's estate, without fraud or collusion."

Further legal representative in terms of Section 30 of Hindu Succession Act says that by virtue of a Will, the propounder of the Will acquires the legal rights.

Reliance is also placed on judgment dated 26.07.2016 passed by the High Court of Karnataka in **Gurubai Vs. The Govt. of Karnataka** in **Civil Revision Petition No. 200015 of 2015**, which reads as under:-

> "14. The Hon'ble Supreme Court while considering the provisions of Section 2(11) and Order 22 Rule 5 of Code of Civil Procedure in the case of Suresh Kumar Bansal vs. Krishna Bansal and Another reported in (2010) 2 Supreme Court Cases 162 has held as under:
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> > "19. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the parties cannot be driven to different Courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict. '
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> > 20. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the Code of Civil Procedure is only for the purposes of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.
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> > 21. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the Will of the deceased plaintiff so that all the legal representatives namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the

deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit.

22. In view of our discussions made hereinabove, we are, therefore, of the view that the High Court as well as the trial Court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged Will of the deceased plaintiff at this stage of the proceedings.

23. Before parting with this judgment, it is necessary to consider the decision of this Court in the case of Jalai Suguna (deceased) through L.Rs. v. Satya Sai Central Trust and Others, [(2008) 8 SCC 521] cited by the learned senior counsel for the appellant. In Jalai Suguna (supra), this Court held that the intestate heir (husband) and the testamentary legatees (nieces and nephews), seeking impleadment as the heirs of the deceased respondent in an appeal have to be brought on record before the Court can proceed further in the appeal. Furthermore, in that decision it was also held that a legatee under a Will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased testator, will be a legal representative.

24. In view of the aforesaid discussions and in view of the decision reported in Jalai Suguna (supra), we are also of the view that in an eviction proceeding, when a legatee under a Will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2(11) of Code of Civil Procedure, for which it is not necessary in an eviction suit to decide whether the Will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the probate Court for a decision whether the Will was genuine or not.

15. In view of the aforesaid reasons, the revision petition is allowed. The impugned orders passed by the Trial Court dated 15.04.2015 on I.A.Nos. V and VI made in O.S.No.71/2012, on the file of the Civil Judge *(Sr.Dn.) at Aland is set aside. The matter is remanded to the Trial Court for fresh consideration of

> the said applications (I.A.Nos.V and VI) after following the procedure as contemplated under Order 22 Rule 5 of Code of Civil Procedure and in the light of the dictums of the Hon'ble Supreme Court stated supra and pass orders in accordance with law.

From the perusal of the aforesaid settled legal prepositions of law by the Hon'ble Supreme Court as well as various High Courts it is apparently clear that by virtue of a Will the person is entitled to be impleaded as a party in the capacity of legal representatives. The question that whether the Will is genuine or not is to be seen in a separate proceedings. The propounder of a Will is required to get a probate as per the settled legal terms. It is the burden upon him to get his Will proved and examined before the Competent Courts if the same is objected by the other side but in the present case as far as bringing the legal representatives on record is concerned, the person having Will in his favour can always be permitted to bring on record for participating the proceedings. It is upon him to establish his rights in the proper proceedings in his civil suit. In view of the judgment passed by the Hon'ble Supreme Court in the case of **Suresh Kumar Bansal Vs. Krishna Bansal and Anr.** reported in **(2010) 2 SCC 162,** wherein**,** the Court has considered view that in terms provisions of law under Order XXII Rule 5 of CPC, the petitioners should have been brought on record for continuing and permitted to continue those legal proceedings. The bringing on record of the petitioner will not operate as *res judicata* and the *inter se* dispute between the rival legal

representatives can always be settled in separate legal proceedings. There is every right to the petitioners to get the genuineness of a Will and get the probate on the same in appropriate proceedings. In such circumstances, the order impugned is *per se* illegal and is hereby set aside. The trial Court is directed to implead the present petitioners as legal representative of plaintiff No.1 along with all other natural heirs who claim to be a legal representatives of plaintiff No. 1 and proceed further in the civil suit with respect to all other *inter se* claims between the parties with respect to genuineness of the Will the same will be governed by the probate proceedings of the Will and will not be effected by the present proceedings.

With the aforesaid directions, present petition is allowed and disposed of. No order as to costs.

(Vishal Mishra)
Judge

LJ*

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