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MP-440-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 29th OF AUGUST, 2025MISC. PETITION No. 440 of 2025*PAWAN PATHAK**Versus**NATHURAM AND OTHERS*

.....
Appearance:

*Shri Anil Kumar Shrivastava, Ms. Pratika Pathak & Shri Rajiv
Raghuvanshi -learned Counsel for petitioner.*

*Shri Tara Chandra Narwariya- learned Counsel for respondents No. 5,
6, 7 and 11.*

*Shri Dharendra Singh Chouhan- learned Counsel for respondents No.
9 and 10.*

*Shri Man Singh Jadon- learned Govt. Advocate for respondent
No.8/State.*

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ORDER

The instant misc. petition under Article 227 of the Constitution of India, has been filed by petitioner against the order dated 08-01-2025 passed by 6th Civil Judge, Sr. Division, District Gwalior in RCSA No. 233 of 2021, whereby the application under Order 22 Rule 3 read with Section 151 of CPC moved on behalf of petitioner has been rejected.

(2) A few facts necessary for adjudication of present petition as narrated therein are that original plaintiff- Munni Devi (since deceased) filed



a civil suit for declaration, partition and permanent injunction in respect of agricultural land in dispute bearing survey nos. 1105, 1561, 1563/1, 1563/2, 2035/1, 2035/2, 2224, 2226/1 and 2226/2 situated at Village Bilheti, Patwari Halka No.120, Tahsil and District Gwalior, *inter alia* pleading that being daughter of late Jagannath Prasad Mudgal having 1/3rd share in the disputed property, she is entitled for partition to get her 1/3rd share by metes and bounds. During her life time, Munni Devi executed a "Will" on 4th of May, 2024 in respect of all moveable and immovable properties in favour of her Late husband Shri Sitaram Pathak and children. Munni Devi expired on 12th of May, 2024. After death of Munni Devi, present petitioner being her son, filed an application under Order 22 Rule 3 read with Section 151 of CPC along with death certificate of Munni Devi, for substitution of his name in place of plaintiff Munni Devi, *inter alia* stating that "Will" was executed by plaintiff in his favour in respect of 1/3rd share of disputed property and, therefore, right to survive in his favour. The trial Court, vide impugned order, rejected application holding that in addition to petitioner, deceased-original plaintiff has having other legal heirs too, which are shown in the "Will" of plaintiff, whose names have not been mentioned in the application.

(3) Being dissatisfied with the impugned order, the present petition has been filed by petitioner on the ground that the order passed by learned Trial Court suffers from grave error of law being passed on basis of surmises and conjectures. If the impugned order is not set aside at this very stage, grave injustice will be caused to present petitioner. It is submitted that learned Trial Court has utterly lost sight of the fact that petitioner is also Class-I heir of



deceased- original plaintiff and right to sue survives in his favour. The learned Trial Court has committed an error of law in dismissing petitioner's application without substituting him in place of deceased- original plaintiff by overlooking the contents of "Will" dated 4th of May, 2024 which was executed by plaintiff Munni Devi in her life time and has bequeathed her 1/3rd share in favour of petitioner. The application cannot be rejected only on the ground that other heirs of deceased have been left because after death of original plaintiff, petitioner became co-owner of property of plaintiff having a right to sue against defendants to the extent of his share which was left by his mother Munni Devi after her death. In support of his contention, reliance has been placed in the case of *Shakuntla (Ms) vs. Shaturghan reported in (1993) 1 MPWN 99* and the decision of Hon'ble Apex Court in the case of *Dolai Molliko and Others vs. Krushna Chandra Patnaik and Others* reported in AIR 1967 SC 49, hence, it is prayed that the impugned order deserves to be set aside.

(4) On the other hand, learned Counsel for respondents by supporting the impugned order, opposed the contentions of petitioner and prayed dismissal of this petition.

(5) Heard learned Counsel for the parties.

(6) The observation made by Trial Court in its impugned order is reproduced as under:-

प्रकरण के अवलोकन से दर्शित है कि आवेदक द्वारा उक्त आवेदन प्रस्तुत कर प्रकरण में स्वयं को मृतक वादी का विधिक वारिस तबाकर प्रकरण से वादी का नाम विलोपित कर उसका नाम वाद के



शीर्षक में वादी के वारिसान के रूप में प्रतिस्थापित किये जाने हेतु प्रस्तुत किया है। उक्त आवेदन के समर्थन में उसके द्वारा वसीयतनाम दिनांक 04.05.24 की प्रति प्रस्तुत की गयी है, जिसके अवलोकन से दर्शित है कि वादग्रस्त संपत्ति में मृतक मुन्नीबाई द्वारा आवेदक के अतिरिक्त उसके अन्य भाइयों का हिस्सा होना भी लेख किया गया है, जिससे दर्शित है कि आवेदक के अतिरिक्त मृतक के अन्य वारिसान भी हैं, निका उल्लेख उनके द्वारा अपने आवेदन में नहीं किया गया है, ऐसी स्थिति में उसे मृतक वादी मुन्नीदेवी का एकमात्र वारिस मानकर प्रकरण में पक्षकार के रूप में प्रतिस्थापित किया जाना उचित प्रतीत नहीं होता है। अतः आवेदक की ओर से प्रस्तुत आवेदन आदेश 22 नियम 3 सीपीसी निरस्त किया जाता है। प्रकरण वादी साक्ष्य हेतु नियत किया जाता है।

(7) On perusal of impugned order, it is found that the trial Court rejected the application of petitioner only on the ground that in addition to petitioner, other legal heirs of deceased- plaintiff do exist in the "Will" executed by deceased- plaintiff in favour of petitioner.

(8) In the case of *Shakuntla (supra)*, it was held by Division Bench of this Court that after death of original plaintiff, the holder of "Will" may be substituted in place of deceased- plaintiff, because he represents the estate of deceased and no further enquiry is necessary. The Division Bench of this Court further held that the term " legal representative" is defined in Section 2(11) of CPC to mean " a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or



sued".

(9) Further, in the case of *Dolai Molliko (supra)*, the Hon'ble Apex Court has observed as under:-

"Civil Procedure Code, 1908 (CPC) - Order 22, Rule 3 - Impleadment of legal representative - Considerations for - Application by the legal representative himself seeking impleadment - Absence of fraud or collusion - Legal representative can be brought on record. This is not a case where a plaintiff or an appellant applies for bringing the heirs of the deceased defendant or respondent on the record; this is a case where one of the appellants died and his heirs have to be brought on record. In such a case there is no question of any diligent or bona fide enquiry for the deceased appellant's heirs must be known to the heirs who applied for being brought on the record. Even so we are of opinion that unless there is fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceeding, there is no reason why the heirs who have applied for being brought on record should not be held to represent the entire estate including the interests of the heirs not brought on the record. This is not to say that where heirs of an appellant are to be brought on record all of them should not be brought on record and any of them should be deliberately left out. But if by oversight or on account of some doubt as to who are the heirs, any heir of a deceased appellant is left out that in itself would be no reason for holding that the entire estate of the deceased is not represented unless circumstances like fraud or collusion to which we have referred above exist."

(10) In view of law laid down by Division Bench of this Court as well as by Hon'ble Supreme Court in the above cited cases, in the considered opinion of this Court, in the present case, the defendants therein/respondents have not stated that the "Will" was executed by means of fraud or collusion. So, on the basis of "Will" executed by deceased- plaintiff, the name of petitioner shall be substituted in place of deceased plaintiff. So, in the considered opinion of this Court, the trial Court has committed an error in rejecting the application of petitioner under Order 22 Rule 3 read with



Section 151 of CPC. Accordingly, the impugned order deserves to be and is **hereby set aside**. The trial Court is directed to implead petitioner as "plaintiff" and decide the suit in accordance with law.

(11) In the result, the instant petition succeeds and is hereby **allowed**.

(12) *It is needless to mention here that on perusal of impugned dated 08-01-2025 passed by 6th Civil Judge, Sr. Division, District Gwalior (Ms. Varsha Bhalavi) in RCSA No. 233 of 2021, this Court finds that when trial Court rejected application filed by petitioner under Order 22 Rule 3 read with Section 151 of CPC and no plaintiff was surviving for suing the suit, then the suit ought to have been rejected as abated but the trial Court fixed the case for plaintiff's evidence.*

(13) *It is crystal clear that the Presiding Officer of Trial Court, namely, Ms. Varsha Bhalavi has no basic knowledge of law and she needs training in JOTRI regarding procedural law. In this regard, a copy of this order be forwarded to District Judge of concerned District, Director of JOTRI as well as the Registrar General of this High Court, Jabalpur.*

(14) CC as per rules.

(HIRDESH)
JUDGE

MKB