



\$~2

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

+ RFA 869/2016

SOM DUTTA SHARMA SINCE
DECEASED THR HIS LRS

..... Appellant

Through: Mr. K.K. Rai, Senior Advocate
with Mr. Piyush Sharma, Mr.
Shivam Dubey, Mr. Ashwini
Sharma, Mr. Avinash Suri, Mr.
Anshul Rai, Ms. Medha Tandon &
Ms. Sreoshi Chatterjee, Advocate
for Appellant No. 1.
Mr. Umesh Suri & Mr. Avinash
Suri, Advocates for Appellant No.
2. [M:-8447976744]

versus

LATA SHARMA

..... Respondent

Through: Mr. Pramod Kumar Ahuja,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **30.11.2023**

CM APPL. 30324/2023(Application on behalf of appellant for bringing
on record the legal heirs of appellant No. (ii))

CM APPL. 42609/2023(Application on behalf of appellant No. 2-Shashi
Prabha Sharma – (husband) Yash Pal Sharma)

1. These applications have been filed for substitution of the legal heirs of appellant No. 2 – Ms. Shashi Prabha Sharma who has passed away during the pendency of the appeal.

2. CM APPL. 30324/2023 has been filed by appellant No.1 – Mr. Ashwani Sharma, seeking substitution of the deceased appellant No.2 by



her two children, namely, Mr. Aaditya Sharma and Ms. Aakanksha Mihir Chandan. CM APPL. 42609/2023 has been filed by Mr. Yash Pal Sharma, husband of the deceased, also seeking impleadment.

3. The appeal is directed against a judgment and decree dated 19.07.2016 by which the learned Trial Court dismissed the suit filed by the father of the original appellants – Mr. Som Dutt Sharma. The defendants in the suit were the wife and children of a predeceased son of Mr. Som Dutt Sharma namely Mr. Surinder Sharma. They are arrayed as respondent Nos. 1 to 3 in the appeal. The suit was principally for possession and recovery of *mesne profits* in respect of *First Floor* of property bearing No. *AE-7 Tagore Garden, New Delhi*.

4. Mr. Som Dutt Sharma died during the pendency of the suit and was substituted by his wife – Mrs. Bimla Rani Sharma, his son – Mr. Ashwani Sharma and his daughter – Ms. Shashi Prabha Sharma, as his legal heirs. Mrs. Bimla Rani Sharma also died during the pendency of the suit and the suit was continued by Mr. Ashwani Sharma and Ms. Shashi Prabha Sharma. Aggrieved by the dismissal of the suit, they filed the present appeal as appellant Nos. (i) and (ii) respectively.

5. Ms. Shashi Prabha Sharma has passed away on 26.04.2023, during the pendency of the appeal. She has admittedly left behind her husband, Mr. Yash Pal Sharma and two children. In the rejoinder to CM APPL. 42609/2023, it has been stated that the names of children of the deceased appellant No.2 are Mr. Medant Jasrra (formerly known as Mr. Aaditya Sharma) and Ms. Aakanksha Mihir Chandan.

6. The only issue in controversy is whether the husband of the deceased appellant No.2 is entitled to be impleaded, on a proper



interpretation of Section 15 of the Hindu Succession Act, 1956. It is the admitted position that the property in issue in the present case was originally the property of the father of late Ms. Shashi Prabha Sharma. According to appellant No.1, Mr. Ashwani Sharma, the property was bequeathed to him by late Mr. Som Dutt Sharma in terms of a will dated 18.03.1993. This contention has been disbelieved by the learned Trial Court. In any event, according to Mr. K.K. Rai, learned Senior Counsel for appellant No.1, the property having originally been the property of the father of Ms. Shashi Prabha Sharma, by operation of Section 15(2)(a) of the Hindu Succession Act, 1956, any share of Ms. Shashi Prabha Sharma would be inherited by her son and daughter, to the exclusion of her husband. Mr. Umesh Suri, learned counsel for Mr. Yash Pal Sharma, however, submits that Section 15(2)(a) would apply only if the deceased had died without any son or daughter. As the deceased in the present case had a son and daughter, he submits that Section 15(1)(a) would apply, and the interest of the deceased, if any, would devolve upon the son, daughter and husband of the deceased.

7. In my view, it is not necessary to adjudicate this contention finally at the present stage. If appellant No.1 succeeds in the appeal, the question of devolution of any interest of Ms. Shashi Prabha Sharma would not arise. On the other hand, if the order of the learned Trial Court is upheld, the question of entitlement of respective parties can be gone into at that stage.

8. In these circumstances, for the present, with the consent of learned counsel for the parties, it is directed that Ms. Shashi Prabha Sharma, original appellant No.2, will be substituted by her husband – Mr. Yash



Pal Sharma as well as her children Mr. Medant Jasrra (formerly known as Mr. Aaditya Sharma) and Ms. Aakanksha Mihir Chandan.

9. It is stated by learned counsel appearing on behalf of the aforesaid legal heirs that, although their predecessor in interest Ms. Shashi Prabha Sharma had challenged the judgment of the learned Trial Court, they wish to contest the appeal and support the aforesaid judgment. Mr. Rai submits that this course is not open to them. Be that as it may, it is clear that their impleadment as appellants is untenable. It is therefore directed that the memo of parties will be amended to reflect that appellant No.2 has died, and her husband and children will be impleaded as respondent Nos. 4, 5 and 6 in the appeal. Amended memo of parties be filed by learned counsel for the sole remaining appellant – Mr. Ashwani Sharma within one week from today.

10. It is made clear that this order is not intended to decide any of the issues outlined above on merits finally, but only to ensure that all parties claiming an interest in the subject matter of the appeal are heard.

11. The applications are disposed of with these directions.

RFA 869/2016

I am informed that the appellant – Mr. Ashwani Sharma is a senior citizen and suffering from Parkinson's disease. The appeal is of the year 2016. The Registry is directed to list the appeal in the category of "For Hearing Matters" on 02.05.2024.

PRATEEK JALAN, J

NOVEMBER 30, 2023/'pv'/'