

21.05.2025

Present: Ld. Counsel for plaintiff with plaintiff.  
Sh. Aasheesh Sharma and Sh. Raj Kumar Ld. Counsels for defendant.

An application u/o 6 Rule 17 CPC filed on behalf of the defendant is pending adjudication.

It is stated in the application that plaintiff is not entitled to get any share from the suit property because the defendant is lawful owner of the suit property by virtue of a Will dated 11.11.2016 executed by his wife in his favour. It is further submitted that as the Will was earlier not traceable, his previous counsel advised not to mention about the said Will Deed dt. 11.11.2016 and other material facts in the written statement. However, in the first week of December, 2024 defendant find out the said Will and also changed his counsel and apprised his new counsel regarding the Will Deed dt. 11.11.2016 and some other material facts which could not be mentioned at the time of filing the written statement. Now the plaintiff wants to add new para no.8-A and wants to incorporate some facts at the end of para no.2 of reply on merit in his written statement. Similarly, defendant also wants to delete last five lines of para no.6 of his written statement. Defendant prayed that said amendments are very material and necessary in the written statement to determine the real controversy in the present matter. Thus, prayed for allowing the present application in the interest of justice.

Plaintiff opposed the present application on the ground that the same has been moved seeking permission to place on record additional documents at this belated stage which is ex facie untenable and legally unsustainable. It has been submitted that defendant filed his written statement in July, 2022 but deliberately failed to mention the material fact that the deceased mother of the plaintiff purportedly executed the alleged Will in favour of the defendant. The non-disclosure of such a crucial fact constitutes material suppression and amounts to an abuse of the process of law. Plaintiff further submitted that the alleged Will is false and fabricated and the signatures appearing on the alleged Will does not match with the known and admitted signature of the deceased mother of the plaintiff which raises serious doubt regarding its authenticity. It has been averred that plaintiff was the only person who accompanied his mother in her last days every time. Mother of the plaintiff never executed any Will in favour of defendant during her lifetime. It is further submitted that not a single person visited the mother of plaintiff on 11.11.2016 so the question of executing a Will on 11.11.2016 by mother of plaintiff does not arise at all and further mother of the plaintiff did not visit anywhere on 11.11.2016. Further, the defendant has failed to explain the circumstances under which he allegedly procured the said Will. It is prayed that application may kindly be dismissed.

Coming to facts of the present case, in the original written statement, the defendant nowhere mentioned about the alleged Will deed. Now by way of amendment, the defendant wish to place on record the alleged Will in order to create completely new defence. The defendant in

para no.6 of his original written statement submitted that plaintiff had been misbehaving with his parents and therefore parents had debarred him from the properties. It is also averred in original written statement that the defendant and all other three sons namely Sh. Deepak Sharma, Sh. Mohit Sharma and Sh. Somdutt have succeeded to half share of suit property jointly by law of inheritance as per Hindu Succession Act. These averments clearly show that earlier the defendant took a different stand. By way of present application, the defendant is seeking to create a new defence and is trying to delete/withdraw the admission made in para 6 of reply on merits in his written statement. Furthermore, the defendant has not explained any circumstance as to how and from whom he procured the alleged Will dt. 11.11.2016 in the month of December, 2024. The defendant has put all the blame on the shoulder of his previous advocate to not mention the truth in his pleadings, which is not acceptable since the parties to suit are duty bound to come to the Court with the truth in his pleadings. Even if the Will dt. 11.11.2016 was not traceable, the defendant could have mentioned the existence of the Will in his written statement. Careful examination of averments made in application and the original written statement reveals that the defendant is creating an after thought story.

In view of the above observation, this court is of the opinion that the application filed by the defendant **u/o 6 Rule 17 CPC deserves to be dismissed. Accordingly, the application is disposed off as dismissed.**

Another application u/o VII Rule 14 CPC has been filed on behalf of the defendant seeking permission to place on record the copy of Will dt. 11.11.2016.

Reply not filed. Ld. Counsel for plaintiff submits that he will straightaway argue on the application.

Arguments heard. Record perused and considered.

It is relevant to note that the present application has been filed by defendant under the wrong provision however, mentioning of wrong provision is not fatal if the power to adjudicate the same is with the Court. **Therefore, the present application is treated as application u/o 8 Rule 1-A(3) CPC.**

By way of present application, the defendant is seeking permission to place on record an additional document i.e. copy of Will dt. 11.11.2016 which he had filed with his application u/o 6 Rule 17 CPC. The ground for not filing the same with the written statement is that the said document was not traceable at the time of filing written statement. It is pertinent to note here that in the written statement there is no averment with respect to Will. Meaning thereby the said document is beyond the pleadings hence, cannot be allowed to be taken on record.

In view of the submissions made and the fact that the application for amendment in the written statement has already been dismissed and that the document sought to be placed on record is beyond the pleadings, application **under consideration stands dismissed.**

Accordingly, the application stands disposed off accordingly.

**Put up for P.E. on 16.07.2025.**

(Pooja Jain)  
District Judge-03/NB  
East/KKD Courts/Delhi  
21.05.2025