

CS No. 2187/16

20.07.2017

Present: Sh. Rajesh Chhabra, counsel for plaintiff with plaintiff no.5
Defendant no.1 in person for himself and defendant no.2.
Defendant no.3 is stated to be exparte.

Sh. Vijay Sharma, counsel for defendant no.4 (e & f) with
defendant no. 4 (e) Smt. Chandra Sharma.

Case is at the stage of arguments on application under Order 14 Rule 5 CPC for amendment of the issue no.3 & 4 framed on 28.04.2014. Applicant/defendant no.1 is seeking amendment of issue no.3 & 4 on the ground that in Para 8 of the plaint, plaintiff is stated about the fact that they do not want partition of Gurudwara which is referred in Para-e and despite that the issue framed includes that property. He is seeking amendment of that para accordingly. In issue no.4, applicant is seeking change in the description of Anand Mahulla, Main Road to Saraswati Bhandar Road. In addition to that applicant is seeking reframing it as property bearing no. 9/223A forming part of property bearing no. 9/223 instead of the issue framed as to suit property bearing no. 9/223 forming part of suit property bearing no. 9/223A.

Counsel appearing for LR defendant no.4 (e) & (f), LR of deceased defendant Shakuntala Devi submits that he has not received copy of the amended plaint and other documents from the plaintiff. Perusal of record reveals that deceased defendant no. 4 had already filed written statement and her LR was served after her death by publication vide order dated 23.04.2013. Counsel appearing for LR Defendant no.4

(e) & (f) submits that they never got served in this case and came to know about the pendency of this case in a pending case bearing suit no. 7365/16 titled as Chander Sharma & Anr. vs. Dwarka Nath Shastri and Ors. in the court of Sh. Nipun Awasthi, Ld ACJ, East, Karkardooma. He further submit that he has every right to participate in the proceedings as he has not been proceeded exparte. There is no denying this proposition. He is in fact at liberty to participate even if exparte. But there is no question to supply any copy of the documents in respect of proceeding already having taken place before his entering appearance. Needless to say that he is at liberty to seek certified copies of those details being part to the suit. Adjournment is sought on behalf of defendant no.1 and 2 as their counsel is not present. For proper appreciation of the amendment being sought notwithstanding the contention specifically raised by the counsel for plaintiff that this aspect was already dealt with by Hon'ble High Court vide order dated 05.09.2014, I deem it proper post it for hearing on **10.08.2017**.

(Vipin Kumar Rai)
ADJ-03(E):KKD:DELHI
20.07.2017

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