

IN THE COURT OF MS POOJA JAIN,
ADDITIONAL DISTRICT JUDGE-03, EAST DISTRICT,
KARKARDOOMA COURTS, DELHI

CS No. 603/2021

MOHAN ADVANI

..... PLAINTIFF

Versus

SMT. SAVITRI SEN & ORS.

.....DEFENDANTS

ORDER

1 Vide this order I shall dispose off two applications filed separately by the defendant no.1 & 2 under Order 6 Rule 17 CPC read with Sec. 151 CPC for seeking amendment in their written statement.

2. By way of present applications, the defendants (no.1 & 2) averred on the similar ground that defendants have already filed their written statement and mentioned detailed facts in their written statement. However, in order to clarify the averments made in written statement, the defendants wants to incorporate few facts. Therefore, defendant no.1 seek to add after paragraph no.9 (of defendant no.1) & after paragraph no.10 (of defendant no.2) of the preliminary objections as paragraph no.9(A) & 10(A) respectively, as mentioned in the present applications as follows:

“It is submitted that the suit property was purchased by Shri Sunil Kumar Sen for benefit of his wife namely Smt. Savitri Sen by spending his hard earned money and Smt. Savitri Sen had also contributed

towards sale consideration by paying whole life savings of Savitri Sen and Smt. Madhavi Sen, eldest daughter of the defendant no.1 was also aware of the fact that the suit property was purchased for benefit of defendant no.1, who is mother of Smt. Madhavi Sen and defendant no.2 herein. It is submitted that possession of the suit property was also taken by Shri Sunil Kumar Sen and Smt. Savitri Sen in the year 1994. It is further submitted that from the record of the society, it is clear that Shri Sunil Kumar Sen also became the nominee and the said fact has also been admitted by the defendant no.3 vide their letter dated 07.03.2021. It is also submitted that the plaintiff has also not disclosed regarding the Family Settlement arrived at among the family members of Defendant no.1 on 08.07.1995 being the date of Barsi of Late Shri sunil Kumar Sen. It is submitted that, in fact, on the day of BARSIS i.e. on 08.07.1995, a Family Settlement was arrived at among Smt. Madhavi Sen (deceased daughter of Defendant No.1), Smt. Savitri Sen, Smt. Rupa Manjari Dutta and Shri Prabir Dutta (husband of Smt. Rupa Manjari Dutta) at the suit property. During that time, it was settled and decided in the said Family Settlement that Smt. Madhavi Sen will not claim any right, title or interest in respect of the suit property and Smt. Savitri Sen will become the sole and absolute owner of the suit property forever. The said family settlement was arrived at in view of the fact that Shri Sunil Kumar Sen had purchased the suit property for benefit of his wife. The said family settlement, as stated above, was arrived at after completion of rituals of Barsi of Late Shri sunil Kumar Sen. The said family settlement has also been acted upon by all the family members of late Shri Sunil Kumar Sen. It is submitted that since then, Smt. Madhavi Sen had never claimed any right, title or interest in respect of the suit property and defendant no.1 was all alone being treated as owner of the suit property and is still in possession of the suit property as owner thereof. It is also submitted that the defendant no.1 is also managing the suit property exclusively for herself as owner thereof. Smt. Madhavi Sen had never claimed any possession or ownership right in respect of the suit property in view of the aforesaid family settlement and accepted the defendant no.1 as sole and absolute owner thereof. Therefore, the present suit filed by the plaintiff is not maintainable. It is also submitted that even the defendant no.1 has also filed a suit titled as, "Smt. Savitri Sen vs. Shri Mohan Advani", which is pending adjudication before the Ld. Civil Judge, Karkardooma Courts, Delhi. In view of the aforesaid family settlement, the present suit filed by the plaintiff is not maintainable as the defendant no.1 is the owner of the suit property and the suit is, thus, liable to be dismissed with exemplary costs. The present suit has

been filed only to put pressure upon the defendant no.1. In fact, presently the age of the defendant no.1 is 86 years and defendant no.1 is residing in the suit property.”

3. It is submitted that these amendments are necessary for determining the real controversy between the parties. It is further submitted that the amendment sought is only for clarifying the facts already stated and no prejudice would be caused to the plaintiff if the present application is allowed. It is further submitted that the suit is at its initial stage and issues have not yet been framed. Hence, it is prayed that present application of the defendant no.1 & 2 be allowed in the interest of justice.

4. The plaintiff has filed reply to the present application and opposed the same with vehemence. It is submitted that present application of the defendants is not maintainable as defendants are seeking to change the entire nature of the defence taken in their written statement as an afterthought and same has been filed after defendants no.1 & 2 changed their counsel. It is submitted that plaintiff had already preferred an application under Order 12 Rule 6 of the CPC seeking decree on admissions and reply is also filed by the defendants. It is submitted that defendants had preferred a civil suit bearing no. 223/21 seeking permanent injunction against the plaintiff with respect to the suit property which is pending disposal and no such pleadings as sought to be raised by the defendant no.1 by way of the present application in the civil suit bearing no. 223/2021. Thus, it is evident that the fresh plea raised by the defendant no.1 & 2 is an afterthought and had been raised for the sole purpose of protracting the present litigation by misleading. It is submitted that it is a

settled proposition of law that the party cannot be permitted to amend its pleading if the nature of the pleading/defense is likely to be changed.

5. I have heard to rival contentions of parties and perused the record in the light of relevant statutory provisions of Order 6 rule 17 CPC. The general principle in respect of amendment of the pleadings is that the court at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments may be allowed which are imperative for determining the real questions in controversy.

6. In **Life Insurance Corporation of India versus Sanjeev Builders Private Limited & ANR** 2022 Live Law (SC) 729 the Hon'ble Apex Court observed:-

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side, by the amendment,

(b) the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless
(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897).”

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17.

7. It has been held by Hon’ble Supreme Court in **Abdul**

Rehman v. Mohd. Ruldu that it is permissible for a plaintiff to, after the filing of a written statement by the defendant, amend the plaint to incorporate a challenge to any claims that the defendants may have raised in the written statement. It was observed in this regard as:

"12. It is true that originally the appellants have approached the trial court with a prayer for permanent prohibitory injunction restraining Respondents 1-3 herein from forcible and illegal dispossession of the appellants herein from the land in dispute. Respondents 1-3 herein (Defendants 1-3 therein) filed a written statement wherein they specifically alleged that they have stepped into the shoes of Ramzan and Smt Bashir and Rashid on the basis of the sale deeds dated 25-8-2003. It is the claim of the appellants that the abovesaid Ramzan and Smt Bashir and Rashid have no concern with the ownership of the land in dispute and no right to alienate the suit land to the defendants or anybody else. In view of the stand taken by the defendants in their written statement, in the application filed under Order 6 Rule 17 of the Code, the appellants have specifically raised that the alleged Sale Deeds Nos. 1810 and 1811 dated 25-8-2003 in favour of Defendants 1-3 executed by Ramzan and Bashir and Rashid are liable to be set aside and have no effect on the rights of the plaintiffs and Saifur Rehman qua the suit land and Mutations Nos. 781 and 782 sanctioned on the basis of abovenoted sale deeds dated 25-8-2003 are also liable to be set aside. In view of the claim of the appellants, we verified the necessary averments in the written statement of Defendants 1 and 3 and we agree with the stand of the appellants...."

8. Coming to facts of the present case, in the original written statement, the defendant no.1 in para 9 of her preliminary objections mentioned that in the year 1995 at the time of barsi of husband of defendant no.1, Madhvi Sen (wife of plaintiff/daughter of defendant no.1) orally assured the defendant no.1 that she and defendant no.2 do not need the suit property. Now by way of amendment, the defendants seek to take plea of family settlement between the wife of plaintiff and defendants. In my considered opinion, the defendants had already taken the plea of family settlement in their original written statement but had not used the word 'FAMILY SETTLEMENT' expressly. Moreover, by way of present

application, the defendant are seeking to elaborate their plea. Therefore, I observe that the amendments sought by defendant no.1 & 2 do not materially change nature of suit and also are not beyond the original written statement. It is further pertinent to note that amendment sought are not in the nature of withdrawal of admission if any made by defendants in the original pleadings. Furthermore, the matter is yet at the initial stage for consideration on issues, the application deserves to be allowed.

9. Application of defendants seeking amendments stands allowed. Amended written statement be filed with advance copy to the opposite side within 14 days from today.

Applications are disposed off accordingly.

**Announced in the open Court
Dated : 12.04.2024**

**(POOJA JAIN)
Additional District Judge-03
East, KKD Courts, Delhi**