

CS No. 28/25

Yogender Kumar vs. Dharamveeri Devi

08.01.2026

Present: Plaintiff with Sh. Pankaj Sharma, advocate.
Sh. Irfan Khan, counsel for defendant no.1, 2 & LRs
of defendant no. 3.
Sh. Shivam Panchal, advocate for LRs of defendant
no.4.
Defendant no.5 is exparte vide order dated
21.11.2025.

Plaintiff filed the present suit for partition, recovery of possession and permanent injunction on 22.01.2025 in respect of property bearing no. A-1034, Gali No. 21, Sonia Vihar, Delhi measuring about 80 sq. yards constructed upto one floor. The property belongs to late Sh. Kanwarpal. He left behind his widow Smt. Dharamveeri Devi (defendant no.1), son Sh. Bhupinder Kumar (defendant no.2), legal heirs of other two deceased sons namely Late Sh. Devender Kumar (defendant no.3) & Late Sh. Rajinder Kumar (defendant no.4) as well as one daughter Smt. Nisha (defendant no.5) besides plaintiff Sh. Yogender Kumar (son).

In the memo of parties filed alongwith plaint, names of defendants no. 3 & 4 deceased sons of late Sh. Kanwarpal was mentioned to be represented through their legal heirs. In fact, the plaintiff impleaded dead persons in the memo of parties who will be represented by their legal heirs instead of mentioning the names of legal heirs of the deceased sons of Sh. Kanwarpal. The memo of parties indicated that the suit was filed against two dead

persons. Even, the name of wife of the deceased son Rajinder Kumar, defendant no. 4 was wrongly mentioned as Smt. Radha Devi instead of Smt. Rekha.

Plaintiff moved an application dated 03.05.2025 under Order 6 Rule 17 CPC on 29.05.2025 in very casual manner without giving any details of the proposed amendment which was withdrawn on 15.07.2025 by taking liberty to file fresh application for which plaintiff was burdened with the cost of Rs. 2,000/- also to be deposited in DLSA which has already been deposited.

The plaintiff was required to file fresh amendment application within 10 days on the basis of the liberty taken vide order dated 15.07.2025 but it was filed beyond the time given.

On the basis of the liberty taken vide order dated 15.07.2025, plaintiff filed fresh application under Order 6 Rule 17 CPC dated 13.08.2025 in the court on 21.08.2025. Counsel for LR's of the defendant no. 4 had given statement at bar on 17.10.2025 giving no objection for allowing this application. However, other defendants are opposing the same upon which I have heard counsel for both the parties and gone through the record. On behalf of the plaintiff, the case law **Vibhuti Jauhari vs. Anita Munjal FAO (OS) 145/25 decided on 24.12.2025** is cited.

As per original plaint, the suit was instituted against two dead persons Sh. Devender Kumar and Sh. Rajinder Kumar to be represented by their legal heirs. The name of the wife of the deceased Sh. Devender Kumar was also wrongly mentioned. However, through the present amendment application, plaintiff wants to correct the above mistakes. In place of dead persons,

now the names of their legal heirs is mentioned. Consequently, some paragraphs of the original plaint are sought to be corrected to show that the legal heirs of these two deceased defendants are required to be mentioned at appropriate places and not the deceased defendants. Certain changes are also to be made in para no. 17 relating to cause of action which are shown in bold lines in the proposed amended plaint filed alongwith the above amendment application.

Though the proposed amendment relating to shifting of the names of the legal heirs in place of their deceased predecessors in interest in the memo of parties can be treated as minor in nature but certainly some substantial changes are being done in the cause of action paragraph. New dates when the cause of action aroses from time to time are given in this proposed amended plaint. After going through those proposed amendments even in cause of action paragraph, I am of the view that the nature of suit is not going to be changed in any manner. Infact contents of certain paragraphs and certain clarifications qua the same is added in the cause of action paragraph no. 17 and the same will not go beyond the averments taken in other different paragraphs. I am of the opinion that the proposed amendments are necessary for the effective disposal of the case and can be allowed subject to costs because the nature of the suit will remain same. Certain mistakes done by the plaintiff in filing of the suit against two dead defendants to be represented by their legal heirs is now sought to be corrected by mentioning the names of those legal heirs first and then describing them to be the legal heir of particular defendant. Accordingly, the application under Order 6 Rule 17 CPC is allowed but plaintiff is burdened with the cost of

Rs.15,000/- to be paid to the defendants no. 1, 2 and LRs of defendant no. 3 in equal proportions. The amended plaint annexed with the application under Order 6 Rule 17 CPC is taken on record.

Put up this matter on **29.01.2026** for filing of written statement of the amended plaint as well as payment of the cost by the plaintiff to the defendants no.1, 2 & LRs of defendant no.3. Advance copy of the written statement, if is to be supplied to the counsel for plaintiff atleast 3 days prior to the next date of hearing, so that replication, if any can be filed.

(Ashwani Kumar Sarpal)
Principal District & Sessions Judge
North-East District, KKD Delhi/08.01.2026