

CS No.192/24

HARISH CHAND SHARMA Vs. ISHWAR CHAND SHARMA

15.07.2025

Present: Sh. Shakir Hussain, Counsel for the plaintiff
alongwith plaintiff in person.

Sh. Mohit Sharma, Counsel for the defendant no.1
and 2 alongwith Sh. Pradeep Sharma, Counsel.

None for defendant no.3.

Heard. It is a suit for partition, recovery of construction cost Rs.80,000/- and permanent injunction.

During course of arguments on the basis of allegations made in written statement by defendant no.1 and 2 that suit property was already sold by the parents of parties during their lifetime to a third party, plaintiff has filed applications under Order VI Rule 17 CPC for amendment of plaint and application under Order 1 Rule 10 CPC for impleadment of a new party i.e. alleged purchaser of suit property. Application under Order VII Rule 11 C was also filed by defendant which is also pending.

Ld. Counsel for defendants stated that at the first instance his application under Order VII Rule 11 CPC should be decided and subject to disposal of this application, if so, required application of plaintiff under order VI Rule 17 CPC should be decided, thereafter, court may consider application under order 1 Rule 10 CPC. Ld. Counsel for plaintiff controverted the submissions. After careful consideration, I am unable to agree

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with the Id. Counsel for defendant no.1 and 2. If we consider the scheme of Code of Civil Procedure, the parties to the suit comes at the first place which are given in order 1 of the CPC. Once parties of the suit are determined then plaintiff can establish his case, cause of action and the reliefs against the parties. Once these two aspects are there, court may consider the question of amendment in pleadings. Unless the parties to the suit and the pleadings are in existence, there cannot be any question of amendment of the plaint. In case the contention of Id. Counsel for defendant no.1 and 2 is accepted it will be reverse process of law which will open another Pandora box of rounds of litigation.

Issue notice of application under Order 1 Rule 10 CPC to the proposed defendant on filing of PF, RC and through all legally permissible modes within 10 days. Process be also given dasti.

Matter be fixed on 29.08.2025 for appearance of proposed defendant, filing of reply by him to the application and arguments. Advance copy be given. After disposal of application under Order 1 rule 10 CPC, other pending applications will be considered.

(SANJEEV JAIN)
Principal District & Sessions Judge
North-East, Karkardooma Courts,
Delhi/15.07.2025