

CS no. 192/2024

Harish Chand Sharma vs. Ishwar Chand Sharma

21-1-2026

**ORDER:-**

In this matter, I heard arguments on application dated 15-10-2025 under Order 6 Rule 17 CPC on 6-1-2026 when I was posted as Principal District & Sessions Judge, North East District and reserved the matter for passing orders on this application for today. Plaintiff earlier also moved one application under Order 6 Rule 17 CPC on 17-3-2025 which was withdrawn on 16-10-2025.

However, vide order no. 01/D-2, Gaz.IA/DHC/2026 dated 16-1-2026, I was transferred from North East District to East District. **As per this order of Hon'ble High Court, I have to pass judgment/order in those cases where the same are already reserved by me despite transfer or joining at new place of posting.**

Plaintiff, defendants no. 1 and 2 are real brothers whereas defendant no. 3 is their sister. Plaintiff alleged that suit property was purchased by their father Sh. Jeevan Lal Sharma and mother Smt. Sushila Devi in two parts in year 1986 and 1987 respectively, who have since expired. Plaintiff allegedly made construction on this suit property from his own funds in year 2007 and entire family shifted in it. Lateron, plaintiff due to shortage of space shifted in his own another property. Now the property is in actual physical possession of the defendant no. 1 and 2 but plaintiff claimed joint ownership of the same. Accordingly, he filed the present suit for partition of the same, recovery of Rs. 12 lakhs spent upon its construction and relief of injunction.

Defendant no. 3 opted not to contest this suit and gave no objection for decree of the suit and her right to file the written statement was closed vide order dated 23-1-2025. Defendants no. 1 and 2 in their written statement alleged that this suit property was already sold by their father late Sh. Jeevan Lal Sharma to his brother in law (i.e. maternal uncle of parties) namely Sh. Munna Lal on 23-4-2002 who allowed the

parties to live in the same as his licensee. They denied that property was constructed by plaintiff from his own funds. Defendants thus denied having their own or plaintiff's share in this property.

Vide order dated 3-9-2025, one application under Order 1 Rule 10 CPC moved by the plaintiff was allowed and Sh. Munna Lal was impleaded as defendant no. 4 in this suit. He has not filed written statement so far because plaintiff moved an application under Order 6 Rule 17 CPC on 15-10-2025 also which is being disposed off.

Plaintiff in the light of new facts came on record from the written statement of defendants no. 1 and 2 itself wants to amend some paragraphs of the original plaint. He is now questioning the legality and validity of sale of suit property done allegedly by his father Sh. Jeevan Lal Sharma in favour of newly impleaded defendant no. 4 Sh. Munna Lal. He is describing the sale documents dated 23-4-2002 as illegal, unenforceable and not genuine and accordingly seeking by adding declaration relief in the prayer clause of the suit. An alternative plea is also taken that in case these documents are found correct, then also he and other defendants have become owner of the suit property by way of adverse possession and partition of the suit property is still permissible in that circumstances.

After considering the averments made in the amendment application, I am of the view that nature of the suit is not going to be changed if the proposed amendments are allowed. Infact these are necessary due to the fact that defendant no. 4 has been impleaded subsequently on the basis of the averments made in the written statement of defendants no. 1 and 2. Taking an alternate plea of claim of ownership on basis of adverse possession is conditional one, if documents dated 23-4-2002 are found genuine during trial and this plea will not be inconsistent with the case of the plaintiff. No prejudice will be caused to the defendants if these proposed amendments are allowed as those have crop up from the allegations of the defendants made in their written statement. The proposed amendment can save some more future litigations which will be in the interest of the parties. The question whether the relief of declaration is time barred or not and whether it could have been claimed or not will be

decided only after trial if it is established that plaintiff knew about those documents much prior to the institution of suit or atleast before written statement of the defendants. These proposed amendments infact will be helpful to the court for effective disposal of the suit.

Accordingly, in view of the above discussions, the application dated 15-10-2025 moved by plaintiff under Order 6 Rule 17 CPC is hereby allowed without imposing any costs upon him. Amended plaint is taken on record.

However, plaintiff has to file fresh site plan showing suit property in red and yellow colour as per amended plaint because earlier site plan filed is only showing one red colour. Plaintiff is directed to provide the copy of amended plaint alongwith fresh site plan as ordered above to all the defendants, who can file the fresh written statements if wishes.

After the receipt of fresh written statements if any, the case will be fixed for disposal of one application under Order 7 Rule 11 CPC dated 25-6-2024 moved by the defendants no. 1 and 2 which was ordered to be taken up only after disposal of amendment application and impleadment of new party application as per order dated 15-7-2025. Case laws **Sh. Ram Murti Singh Sisodia vs. Shri Pratap Singh Sisodia 2012 Latest Caselaw 2664 Del** cited on behalf of plaintiff and **H.C. Sachdeva vs. Ved Prakash CS (OS) 1096/2008 decided by Hon'ble Delhi High Court on 8-8-2016** cited on behalf of defendant are not relating to controversy pertaining to amendment of pleading but are relating to issue of maintainability of suit and question of valuation which can be decided lateron.

File be placed now before court of Id. Principal District & Sessions Judge, North East today itself with request to pronounce this order formally and fix the matter for next proceedings.

**(Ashwani Kumar Sarpal)**

**Principal District & Sessions Judge, East**

**Karkardooma Courts, Delhi**