

CS 246/23

SUDHA DEVI Vs. DHARM PAL GIRI AND ORS

16.03.2026

Present: Mr. Ravinder Kumar, Ld. Counsel for plaintiff.
Mr. Gaurav Vashishth, Ld. Counsel for D-1.
Mr. Pawan Kumar Sishodia, Ld. Counsel for D-2.
None for D-3.

1. None has been appearing for D-3 for last many dates. Thus, he is proceeded ex-parte.

IA 1/26 (D-1's application seeking amendment to written statement).

2. At the outset, Counsel for D-1 submitted that inadvertently, D-1 is described as *defendant No. 6* in the title of the application and the same should be read as *defendant No. 1*.
3. D-1 has moved this application seeking amendment to para 7 under the heading 'preliminary objections' of the written statement of D-1 as well as para 4 under the heading 'reply on merits'.
4. It is the contention of the applicant that **after D-1 had filed his written statement** (which as per record was filed on 21.08.2019), **within a few days** it has come in the notice of D-1 that his father late Sh. Johri Singh had executed a Will dated 22.12.2008 duly notarized by a Notary Public as his last Will and testament qua various properties mentioned therein and thereafter, a probate case qua the said Will was also filed by D-1.

5. The said probate case being referred is pending adjudication in this Court as Probate Case No. 13/19.
6. D-1 claims that the said fact was totally overlooked and was not brought to the notice of the Court and it was only recently that this fact has come to the notice of Counsel for applicant. Thus, applicant/D-1 wants amendment to the above paragraphs to bring the factum of Will of late Johri Singh on record.
7. Counsel for D-1 argued that since the probate case No. 13/19 is already pending before this Court, it was a simple mistake by the Counsel for D-1 to not plead the said Will in this case and therefore, the same should be allowed to be pleaded now.
8. On the other hand, Counsel for plaintiff argued that the present suit was originally filed as Suit No. 368/19 in May 2019 and defendant No. 1 had filed his written statement on 21.08.2019 itself. The issues were framed on 04.10.2019 and substantial evidence of plaintiff has been recorded thereafter.
9. It is pointed out by the Counsel for plaintiff that in this suit there is no defence set up by D-1 on the basis of any Will of Johri Singh. In para 7 under the heading 'preliminary objections' and para 4 under the heading 'reply on merits' (the paras sought to be amended), D-1 has set up an oral family partition. Now, by way of the present application, D-1 wants to delete the said defence and its place wants to bring on record a fresh defence of a Will which would amount to withdrawing the defence already set up by D-1. This, as per Counsel for plaintiff cannot be permitted and thus, he prays for dismissal of the application.
10. Arguments heard. Record perused.

11. A bare perusal of the record would show that D-1 herein filed his written statement on 21.08.2019 and trial in this matter began on 04.10.2019 after framing of issues. Substantial plaintiff's evidence has already been recorded in this case.
12. Now, D-1 wants to introduce a new defence by claiming that his father Johri Singh left a Will. As per the application itself, D-1 was aware about the existence of the Will in 2019 itself. He, in para 4 of the present application claims that after he filed his written statement in this case, within a few days it came to his notice that his father had executed a Will. This led him to filing of a probate case No. 13/19.
13. A perusal of the petition of probate case No. 13/19 (also listed before this Court today) would show that as per the applicant (who is the petitioner in the said case) was aware about the Will now sought to be introduced since 2010 itself as the same is stated to have been disclosed at the time of prayer meet of his father. This would mean that the claim of the applicant that the factum of existence of Will came to his knowledge after filing of his written statement in this case, is at odds with his own case pleaded in probate case No. 13/19.
14. Thus, apparently the reason given for introducing the Will at this late stage, appears to be incorrect. Even otherwise, it is settled law that after trial begins in a given case, amendment to pleadings cannot be permitted to be made **unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial.**
15. In the present case, in light of the above facts, D-1 was apparently aware of the Will since 2010 (as per the pleadings of

the applicant in probate case No. 13/19; where he is the petitioner). Even in this case, as per the present application, he became aware of the Will in 2019. Trial also began in 2019. Thus, there is an apparent lack of diligence on the part of defendant and thus, the application is liable to fail on this count itself.

16. Even otherwise, it is settled law that a party cannot be allowed to resile from his pleaded case and take a totally contrary stand from the one already taken by him by allowing amendment to pleadings. In the present case, D-1 has pleaded an oral partition *inter se* the parties and it is only for the first time that a Will is sought to be introduced after substantial plaintiff's evidence. Only because a separate probate case had been filed by him qua the said Will shall not mean that he can introduce the said Will in this case as a defence. Once he has sought to defend this case on the basis of an oral partition, he cannot be allowed to resile from it and introduce a fresh defence premised on the Will.

17. Considering the above, the application is misconceived. It is dismissed.

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18. List for cross-examination of PW-3 on 17.03.2026.

Aashish Gupta
DJ-01/NE/KKD/DELHI
16.03.2026