

**IN THE COURT OF SH. KISHOR KUMAR, DISTRICT
JUDGE-04 (NORTH), ROHINI COURTS, DELHI**

**CS No. 58333/2016
CNR No. DLNT01-000295-2011**

Smt. Susheela Devi
@ Sheela Devi & Ors.

.....Plaintiffs

Versus

Smt. Asha & Anr.

.....Defendants

Order/18.02.2025

1. Vide this order I shall dispose of the application under Order VI Rule 17 CPC, moved on behalf of the plaintiffs.

2. In brief, it is stated on behalf of the plaintiffs that during preparation of reply to the application filed by the defendants under Order XII Rule 6 CPC, it has been informed by the plaintiffs to the counsel that a shop adjoining to the staircase was sold by Sh. Raj Singh, husband of plaintiff no.1 and father of plaintiff no.2 to 4 during his life time in the year 1993 to Sh. Satpal who remained in possession for quite some time and thereafter sold the shop to someone else, who in turn sold the shop to Sh. Sunil Kumar son of Sh. Surat Singh in the year 2019 and since then Sh. Surat Singh is in use and possession of the said shop as owner thereof. It is stated that this fact was inadvertently omitted to be mentioned in the plaint at the time of

filing the suit. The site plan which was filed along with the suit was also not showing that the shop adjoining to the staircase was sold. It is further stated that now plaintiff wants to incorporate the said facts in the plaint. Hence, the present application.

3. Per contra, it is submitted on behalf of the defendants that by way of present application plaintiffs want to incorporate those facts which were already in the knowledge of plaintiffs and in fact in the application itself it has been mentioned that these facts were informed to the counsel by plaintiffs themselves. It is further stated that the present application deserves to be dismissed with cost.

4. I have heard Ld. Counsels for both the parties as well as have gone through the material on record.

5. Order VI Rule 17 of the CPC grants permission to the parties to the case to amend their pleadings at any stage of the proceedings. The proviso under this rule says that after the trial has commenced, an application for amendment shall not be allowed. However, it might be allowed if the court thinks that, in spite of due diligence, it was not possible for the party to raise the matter before the trial commenced. Such application is not governed by the law of limitation. That means there is no limitation available against this provision, and an application to amend the pleading can be granted at any stage of the proceedings.

6. The plaintiffs have filed the present suit for partition and permanent injunction, contending inter alia that the plaintiffs and defendants are co-owners of the property bearing no. H No. 1, Panaudyar Narela Delhi 110040 measuring 163.20 sq yards consisting of ground floor with 6 shops and first floor with rooms (hereinafter be referred to as suit property) inherited from Sh Raj Singh, husband of plaintiff no.1 and father of defendants no.2 to 4, father in law and grand father of defendants no.1 and 2, respectively. Despite the fact that plaintiffs and defendants are co-owners of the suit property, the defendant no.1 started quarrelling, asserting herself to be absolute owner of the entire suit property.

7. Perusal of record shows that in the present case, defendants have filed an application under Order XII Rule 6 CPC which was allowed vide order dated 17.05.2024 and a preliminary decree of partition has been passed with respect to the suit property.

8. In *Vidyabai and others vs. Padmalatha and another*—AIR 2009 SC 1433, Hon'ble Supreme Court has discussed the legislative intent behind bringing the proviso to Rule 17 of Order 6 of CPC. At para 7 of the said judgment it was opined that the provisions of Order 6 Rule 17 of the CPC are in mandatory form. The court's jurisdiction to allow an application under Order 6 Rule 17 of CPC is taken away unless the conditions precedent therefore are satisfied i.e., the court must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of trial.

9. As per the plaintiffs themselves, they were very well aware about the facts sought to be added by way of present application, however, they opted not to mention the same at the time of filing of the suit for the reasons best known to them. No reason has been mentioned by the plaintiffs in the present application as to why they did not incorporate the said facts in the plaint at the time of filing of present suit and no circumstance has been mentioned which may point out towards the fact that despite due diligence they could not mention these facts initially. Now, when the preliminary decree of partition has already been passed in the present case, it appears that plaintiffs have filed the present application just to fill up the lacunae in their case and with further view to delay the proceedings somehow. In these circumstances, I am of the considered opinion that allowing the present application for amendment in plaint at this stage would certainly cause prejudice to the defendants.

10. In view of my discussion hereinabove and the case laws, as cited above, application under Order VI Rule 17 CPC, moved on behalf of the plaintiffs, stands dismissed.

Announced in open Court
On 18.02.2025

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/18.02.2025