

Present: Sh. Sanjeev Kumar Chauhan, Ld. Counsel for
plaintiff.
Sh. Ashish Sharma, Sh. Saurav Singh, Sh.
Rajeshwari Chaudhary, Sh. Akash Bhatia, Ld.
Counsels for defendant no.1.

Arguments on application under Order VI Rule 17
CPC, filed on behalf of the plaintiff, heard.

It is submitted by Ld. Counsel for plaintiff that the
defendant no.1 has relied upon a Will dated 05.09.2020, which
the plaintiff came to know from the WS filed on behalf of
defendant no.1. It is further submitted that plaintiff now wants to
amend the plaint thereby seeking declaration also besides already
claimed other reliefs, to declare the said Will as null and void.

Per contra, it is submitted by Ld. Counsel for
defendant no.1 that defendant no.1 is the owner of the suit
property and plaintiff has no right over the suit property and
further that present application deserves to be dismissed.

Submissions made on behalf of the parties are taken
into consideration. Record perused.

In **Rajesh Kumar Aggarwal vs. K.K. Modi, (2006) 4
SCC 385**, it was held that “*Order VI Rule 17 consist of two parts
whereas the first part is discretionary (may) and leaves it to the
Court to order amendment of pleading. The second part is
imperative (shall) and enjoins the Court to allow all amendments
which are necessary for the purpose of determining the real
question in controversy between the parties. In our view, since*

the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.”

The plaintiff has filed the present suit for partition, permanent and mandatory injunction and came to know about the Will dated 05.09.2020 only after filing of written statement by the defendant no.1. It is pertinent to mention here that issues in the present case are yet to be framed and the matter is at the stage of completion of pleadings. The defendant would get sufficient opportunity to cross examine plaintiff witnesses. In these circumstances, no prejudice shall be caused to the defendant if the present application is allowed.

In view of my discussion, hereinabove and the case law, as above, the application under Order VI Rule 17 CPC, moved on behalf of plaintiff stands allowed.

Amended plaint as well as WS to the amended plaint have already been filed. Same are taken on record.

Ld. Counsel for the plaintiff submits that he does not wish to file replication to the amended WS.

Pleadings are complete. On the basis of pleadings, following issues are framed for trial :

1. Whether the plaintiff is entitled for a decree of declaration, as prayed for ? OPP
2. Whether the plaintiff is entitled for a decree of partition, as prayed for ? OPP

3. Whether the plaintiff is entitled for a decree of permanent injunction, as prayed for ? OPP
4. Whether the plaintiff is entitled for a decree of mandatory injunction, as prayed for ? OPP
5. Whether the defendant no.1 is owner of the suit property on the basis of Will dated 05.09.2020 ? OPD
6. Relief.

No other issue arises or is pressed for by the parties.

Let list of witnesses alongwith affidavits of the witnesses be filed by both the parties within 15 days from today with advance copy to the opposite party.

Put up for PE on 17.09.2024.

It is made clear that in case advance copy of affidavit in evidence is not supplied, a cost of Rs.2500/- shall stand imposed upon the plaintiff.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/12.07.24.