

13 CS DJ 128-24

Satinder Singh Dhir Vs. Arvind Kumar

16.04.2026

Present:- Sh. Pranav Gupta, Ld. Counsel for plaintiff.
Sh. Sunil Jacob, Ld. Counsel for defendant no. 1
through VC.
Sh. Prakash Chauhan and Sh. Omkareshwar, Ld.
Counsel for defendant no. 2 and 3.

1. Arguments on application under Order VI Rule 17 CPC advanced by the parties.
2. List for orders at **3 pm**.

(Rahul Bhatia)
DJ-1 (South-East), Saket Court
New Delhi/16.04.2026(sk)

At 3 pm

3. Ld. Counsel for plaintiff has submitted that the present suit has been filed for partition of basement of property bearing No. 44 A, Massi Garh, New Delhi-110025. It is submitted that property No. 44 A was claimed to be owned by defendant no. 1, who approached the plaintiff in 1999 for redevelopment of the property. As such, a collaboration agreement dated 31.12.1999 was entered between the plaintiff and defendant no. 1 and plaintiff was to receive the ground floor and half of the basement of the property. The plaintiff performed his part of the collaboration agreement and constructed the said building. On completion, the ground floor was sold to a third party and the plaintiff retained his one half interest in the basement.
4. Thereafter, on 21.12.2012, a compromise was reached between the parties and a common lock was affixed with both

parties having the keys and access to the suit property. Recently the plaintiff came to know that the defendant no. 1 broke open the lock of the basement and put his own lock on the same. Thereafter, it came to the knowledge of the plaintiff in August 2023 that defendants no. 2 and 3 are occupying the entire basement.

5. The defendants filed their respective written statements and claimed that the basement was transferred to defendant no. 3 on 17.04.2015 and as such neither the plaintiff nor defendant no. 1 has any right in the basement. Thereafter, defendant no. 2 and 3 filed an application under Order VIII Rule 1 A CPC which was allowed vide order dated 20.01.2025 and sale deed dated 06.05.2024 by way of which the basement was transferred to the defendants no. 2 and 3 was taken on record.

6. It is submitted by Ld. Counsel for plaintiff that the plaintiff had filed the present suit for partition of the basement and third party title has been created by defendant no. 1 in favour of defendants no. 2 and 3 during the pendency of the present suit. It is further submitted that by creation of third party title, the rights of the plaintiff have been effected and as such the plaintiff wishes to seek a declaration that the sale deed dated 06.05.2024 is null and void. It is submitted that the additional prayer is borne out from the same cause of action on which the original plaint was filed. It is submitted that since the sale deed was executed during the pendency of the suit, the plaintiff had no occasion to challenge the sale deed earlier. Further, it is submitted that no fresh cause of action is being averred by the plaintiff and the

prayer for cancellation of the sale deed is a consequence of half share of the plaintiff in the basement.

7. The defendants have opposed the application and filed their replies. Ld. Counsel for defendant no. 1 has submitted that the present application is a misuse of process of law as it changes the nature of the suit by introducing a new and independent cause of action. Further, after the commencement of trial, an application under Order VI Rule 17 CPC can only be filed if the applicant can show that despite due diligence he could not have raised the issue earlier. Further, issue of valuation of the reliefs in amended plaint have also been raised. It is further submitted that the sale deed dated 06.05.2024 was executed in pursuance to agreement to sell dated 17.04.2015 and as such it cannot be said that the sale deed was executed subsequent to filing of the suit.

8. Ld. Counsel for defendants no. 2 and 3 has submitted that the plaintiff has filed the present suit on the basis of collaboration agreement dated 31.12.1999 and the original suit as well as the amendment are barred by limitation. It is further submitted that the present application does not disclose as to what amendments the plaintiff wishes to incorporate. As such the present application is not in the correct format and cannot be allowed. Thus, the dismissal of the application is sought.

9. Heard. Perused.

10. The present case has been filed by the plaintiff for partition on the basis of collaboration agreement date 31.12.1999 by way of which the plaintiff and defendant no. 1 were to be the co-owners of the basement with one half share each. As per the

plaint, the defendants no. 2 and 3 were in possession of the basement at the time of filing of the suit. The right alleged by the plaintiff flows out of the collaboration agreement and it is claimed that the plaintiff is one half owner of the basement.

11. Although the possession of defendant no. 2 and 3 with respect to the basement is admitted by the plaintiff, however nothing in the plaint depicts that the plaintiff was aware of the nature of interest of defendants no. 2 and 3 in the suit property. Only when the written statement was filed by the defendants, it came on record that defendants no. 2 and 3 claim to have acquired rights in the basement vide agreement to sell dated 17.04.2015. Thereafter, defendants no. 2 and 3 placed on record sale deed dated 06.05.2024. The date of the sale deed itself reveals that the same was executed after the filing of the present suit and as such the plaintiff could not have challenged the same at the time of filing of the plaint. As such no objection can be taken as to the timing of filing of the present application.

12. Coming to the arguments of the defendants that fresh cause of action is sought to be incorporated, suffice is to say that the cause of action in favour of the plaintiff is the execution of the collaboration agreement. As per the case of the plaintiff, the said collaboration agreement gives one half share of the basement to the plaintiff. The right to seek cancellation of the sale deed also arises out of the same entitlement of the plaintiff i.e. the collaboration agreement. Thus, by challenging the sale deed, the plaintiff only wishes to incorporate consequential relief to partition.

13. Next argument raised by the defendant is with respect to the change in nature of the suit. However, as discussed herein above, the prayer seeking cancellation of the sale deed is a consequential relief to the prayer of partition based upon facts subsequent to the filing of the plaint. Being a consequential relief, it cannot be said that seeking cancellation of the sale deed would result in changing the nature of the suit. As such, this objection also cannot be accepted.

14. Last objection raised is that the application has not been correctly filed as the amendments sought are not incorporated in the application itself. A perusal of the application reveals that by the said application the plaintiff wishes to incorporate the fact of sale of suit property to defendants no. 2 and 3 and seeks cancellation of the same. Although the exact amended paragraphs have not been mentioned in the application itself, the same is supported by an amended plaint. Perusal of the plaint and the amended plaint would reveal that the plaintiff has added factual averments as to filing of application under Order VIII Rule 1 A CPC and the sale deed in paragraph no. 23 and 24. Further, the said factual matrix is also mentioned in the paragraph with respect to cause of action and prayer of declaring the sale deed has been added. Thus, what appears is that apart from the averments with respect to facts arising after the filing of the suit have been added and no other amendments have been made in the amended plaint. As such, this objection of the defendants also cannot be entertained.

15. In view of the above discussions, the present application is

allowed. Amended plaint filed along with the application is taken on record.

16. Defendant no. 1 has filed written statement to the amended plaint. Same is also taken on record. Replication, if any, be filed on or before the NDOH.

17. Written statement to the amended plaint, if any, be filed by the defendants no. 2 and 3 within 30 days. Replication, if any, be filed on or before the NDOH.

18. List for completion of pleadings on **20.07.2026**.

(Rahul Bhatia)
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