

PRATIBHA SHARMA Vs. INDU SHEKHAR

20.01.2022

Case taken up today through VC from Home Office in view of the office order no. 207-230/Judl/SHD/2022 dated 14.01.2022 issued by Ld. Principal District & Sessions Judge, Shahdara in the wake of Corona Virus (Covid-19) pandemic.

**Present : Sh. Vijay Kumar Rana, Advocate for the Plaintiff.
Sh. Manmohan Satija, Advocate for the Defendant No.1.
Sh. Gagan Kumar Singhal, Advocate for the Defendant No. 2.**

Case is listed today for report on settlement or in the alternate, for consideration on the applications i.e. application under Order 6 Rule 17 CPC and application under Order 39 Rule 1& 2 CPC.

It is submitted that the matter remained unsettled between the parties before the mediation center.

On the application under Order 6 Rule 17 CPC, Ld. counsel for the plaintiff submits that the necessity to file the aforesaid application has arisen only after filing of written statement by defendant no. 1, wherein he has taken a stand that his mother has left a Will dated 05.04.2010 in his favour with respect to the suit property. It is further submitted that the said Will has been forged by defendant no.1 in order to grab the suit property. He thus contends that by way of aforesaid application, the plaintiff is seeking relief of declaration to declare the Will as null and void.

On the other side Ld. counsel for the defendant no. 1 submits that the plaintiff was having knowledge of the Will prior to filing of the present suit.

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It is his further contention that the plaintiff is seeking relief of declaration, which is time barred. He thus submits that the present application is liable to be dismissed.

Ld. Counsel for defendant no.2 submits that the defendant no.2 has no objection if the aforesaid application is allowed.

Heard.

Case is at the initial stage as trial is yet to commence. By way of amendment sought for, the plaintiff is challenging the authenticity of the Will, which has been disclosed by the defendant in the written statement. The contention of defendant no.1 that the Will sought to be declared as null and void was already in knowledge of the plaintiff, has been refuted by the Ld. counsel for the plaintiff. In the considered opinion of this Court, taking additional/ alternative plea in the plaint would not change nature of the suit. Reliance is placed on the judgment of Hon'ble Supreme Court reported as (2009)10 SCC 84, **Revajeetu Builders and Developers Vs. Narayanaswami and Sons and others** wherein principles have been laid down which ought to be taken into consideration while allowing or rejecting the application for amendment as:-

“63.....On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*

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(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application”.

Adverting to the facts of the present case, refusing amendment would in fact lead injustice or lead to multiple litigation as the plaintiff claims to have derived knowledge of alleged Will during the pendency of the present suit. The question of limitation raised by the defendant no. 1 is a mixed question of fact and law which cannot be decided at this stage. Further, amendment sought for is necessary for deciding the real controversy between the parties in the suit. Indeed, raising a plea in the plaint would not absolve the plaintiff from proving the same.

As per settled law, the amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or nature of claim, which is not so in the present case. As the trial is yet to commence, there is no reason to disallow the application filed under Order 6 Rule 17 CPC. In view thereof, amendments sought for are hereby allowed. **Accordingly, application under Order 6 Rule 17 CPC stands disposed of.** Amended plaint is taken on record. Written statement to the amended plaint be filed within stipulated period with copy to other side.

Be put up for completion of pleadings, filing of original documents, admission-denial of documents and for consideration on the

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application under Order 39 Rule 1 & 2 CPC on **13.10.2022.**

Shortest possible date is given considering the pendency as well as regular cause list. There is pendency of about 2300 cases which includes about 400 more than five year old cases in this court.

(Manjusha Wadhwa)
Additional District Judge -02
Shahdara, Karkardooma Courts,
Delhi: 20.01.2022.