

13.02.2024

1st call at 12:50pm

Present: Sh. M.L. Gupta, Ld. Counsel for the plaintiff along with plaintiff in person.

Sh. Shiv Kumar Pandey, Ld. counsel for the defendant along with defendant in person.

Matter is listed for arguments on the application under Order VI Rule 17 r/w Section 151 CPC.

Ld. counsel for the plaintiff, on instructions submits that plaintiff has no objection, if the present application under Order VI Rule 17 r/w Section 151 CPC be allowed.

The defendant by way of proposed amendments wants to delete/give up his legal plea “owner by way of adverse possession in respect to suit property” taken in the WS.

It is jointly submitted by the Ld. counsels that the defendant had filed a suit for declaration, partition and permanent injunction in respect to the suit property against the plaintiff before the Hon’ble High Court of Delhi i.e. CS(OS) No.455/2018 which was disposed off.

The Hon’ble High Court in the order dated 13.05.2019 has categorically stated that defendant cannot take the “plea of adverse possession” and “plea of oral family settlement” together and both the pleas are antithetical and inconsistent to each other. In the said suit, defendant was given liberty to move an appropriate application before this court for clarifying his stand.

(2)

Ld. Counsel for the defendant submits that the defendant wants to keep his plea of “oral family settlement” as his defence in the present suit and wants to give up his plea of adverse possession.

Ld. Counsel for the defendant further submits that the defendant by way of proposed amendment also wants to delete the name of Benami in para no.5 and 15 of the reply on merits of the WS.

It is further submitted by the Ld. Counsel for the defendant that the proposed amendment shall not tantamount to withdrawal of the admissions, if any made in the WS earlier by the defendant and the proposed amendment shall not change the nature of defence of the defendant and shall also not prejudice the plaintiff.

In view of the contentions made in the application, submissions made by the Ld. Counsels, no objection given by the Ld. Counsel for the plaintiff and considering the fact that plea of adverse possession and plea of oral family settlement taken by the defendant earlier cannot move together and they are inconsistent to each other and also the other proposed amendments are formal in nature and would not change the nature of defence of the defendant earlier taken, the application under Order VI Rule 17 r/w Section 151 CPC allowed subject to cost of Rs.5,000/- to be paid the plaintiff.

The issue no.3 framed on 05.09.2018 is accordingly deleted.

Application under Order VI Rule 17 r/w Section 151 CPC is accordingly disposed off.

Amended WS already filed. Same be taken on record.

Pleadings are already completed and issues are already framed on 05.09.2018.

(3)

Ld. counsel for the defendant submits that one application for taking the additional documents on record filed by the defendant is still pending for adjudication.

Ld. Counsel for the defendant is directed to flag the same.

It is already 1:31pm, matter is pass over.

(Deepanker Mohan)
Additional District Judge-04
Shahdara District/KKD Courts/Delhi
13.02.2024

2nd call at 3:04pm

Present: Sh. M.L. Gupta, Ld. Counsel for the plaintiff along with plaintiff in person.

Sh. Shiv Kumar Pandey, Ld. counsel for the defendant along with defendant in person.

It is submitted by the Ld. Counsel for the defendant that two applications u/s 151 CPC for taking the additional documents on record are pending for adjudication.

It is further submitted that the plaintiff has filed the joint reply to the said applications dated 06.09.2018 and 18.09.2018.

On instructions, Ld. Counsel for the defendant submits that defendant wants to withdraw his application u/s 151 CPC dated 06.09.2018.

In view of the submissions given by the Ld. counsel for the defendant, the application u/s 151 CPC dated 06.09.2018 is hereby dismissed as withdrawn.

Application u/s 151 CPC dated 06.09.2018 is accordingly disposed off.

(4)

Put up for arguments on the application u/s 151 CPC dated 18.09.2018 on **22.03.2024**.

Date is given as per the convenience of the Ld. counsels.

(Deepanker Mohan)
Additional District Judge-04
Shahdara District/KKD Courts/Delhi
13.02.2024