

IN THE COURT OF GAURAV: DISTRICT JUDGE-01
SHAHDARA DISTRICT, KARKARDOOMA COURTS:
DELHI

CS No. 683/2019

In the matter of: -

Harish Gupta

.....Plaintiff

Versus

Pushpa Gupta & Ors.

.....Defendants

20.05.2025

ORDER

1. Vide this order, I shall dispose of the application under Order VI Rule 17 read with Section 151 of Civil Procedure Code, 1908 (*hereinafter referred to as "CPC"*), filed by defendants; seeking amendment of written statement on the ground of subsequent facts occasioned on the death of defendant no. 1.
2. Reply to the aforesaid application has been filed by plaintiff, denying all the assertions made therein and has prayed for dismissal of the aforesaid application.
3. Arguments were heard at length on behalf of Ld. Counsels for parties.
4. Brief facts of the present suit are that the plaintiff has filed a suit for partition, permanent injunction and declaration against the defendants in respect of entire suit property as mentioned in the plaint.
5. By way of present application, Ld. Counsel for the defendant is seeking amendment in the written statement and

contending that during the pendency of the present suit, defendant no. 1 expired on 11.02.2024, and during her lifetime, she had executed a registered *Will* dated 20.08.2020 (*hereinafter referred to as “Will”*), bequeathing the one of her properties i.e. E-5, Krishna Nagar, Delhi-110051, measuring 77.1/3 square yards in favour of defendant no. 2 (*hereinafter referred to as “suit property”*).

6. He further contended that by virtue of the said *Will*, defendant no. 2 has become the absolute owner of the said suit property. Therefore, the defendants seek to incorporate this fact in their written statement by way of the present application.

7. He further contended that no prejudice is going to be caused to the plaintiff, if the present application is allowed. At the end, it is prayed that the present application may kindly be allowed and also to take the amended written statement on record.

8. Per contra, Ld. Counsel for plaintiff vehemently opposed the aforesaid application and contended that the defendants are seeking to introduce the story of an alleged *Will* at a belated stage to change the nature of defence.

9. He further contended that the alleged *Will* dated 20.08.2020, if at all executed by the defendant no. 1, was never disclosed by defendant no. 1 during her lifetime, despite her regular appearances in the present suit before this Court. No explanation has been furnished as to why such an important fact was never pleaded earlier in their joint written statement. Moreover, no copy of the said alleged *Will* was ever filed along with the original written statement.

10. He further contended that the defendant no. 2 has already instituted a separate civil suit bearing “CS No. 342/2024” against the plaintiff and his wife; for possession, permanent injunction, and damages/mesne profits, based on the said alleged *Will*, and therefore, there is no requirement to incorporate the said alleged *Will* again by way of amendment in the present case. At the end, it is prayed that the present application may be dismissed with exemplary cost.

11. I have considered the rival contentions made by the Ld. Counsels for the parties and have also carefully perused the entire material available on record.

12. Before proceeding further, it is relevant to reproduce the Rule 17 of Order VI of the Civil Procedural Code, 1908, which runs as under: -

“17. Amendment of pleadings. —The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

13. It is imperative to mention herein that the Court should consider the guiding principles while considering an application for amendment of pleadings, which are as follows:

- 1) Whether the amendment is necessary for determining the real question in controversy;*
- 2) Whether the amendment causes prejudice to the other side;*

3) *Whether the amendment is mala fide or an afterthought;*

4) *Whether it changes the nature of the defence or claim.*

14. Admittedly, defendant no. 1 expired on 11.02.2024, and the issues in the suit, were framed thereafter on 27.07.2024, and the matter presently is at the stage of plaintiff's evidence. Accordingly, the present application for amendment, falls within the scope of the proviso to Order VI Rule 17 CPC, which bars amendment of pleadings after commencement of trial unless the Court is satisfied that the party could not have raised the matter earlier despite exercise of *due diligence*.

15. In the present case, the defendants seek to amend their written statement to incorporate the fact of the said *Will* executed by defendant no. 1 in favour of defendant no. 2, which is claimed to be discovered and relied upon only after her (defendant no. 1) demise on 11.02.2024. It is settled that the rights under a *Will* accrue only after the death of the testator, and till such time, the *Will* remains inoperative and inchoate.

16. The legal consequences and the right to assert ownership under the *Will* arose for the first time only upon the demise of defendant no. 1. Therefore, at this stage, the defendants cannot be faulted for not pleading the *Will* at the time of filing of the original written statement.

17. Though, it is true that the issues were framed after the death of defendant no. 1 but there is nothing on record to suggest that the defendants deliberately withheld the *Will* or failed to act with reasonable diligence. It is well settled that amendments

should be allowed when they are necessary for determining the real question in controversy and do not result in injustice or prejudice to the other side.

18. As far as the contention of the Ld. Counsel for the plaintiff that the defendant no. 2 has already filed a separate Civil Suit i.e. CS No. 342/2024, based on the said alleged *Will*, does not preclude the defendants from raising a legitimate defence in the present suit, especially when the same relates to ownership of the suit property, which is directly in issue in the present partition proceedings.

19. Therefore, this Court is of the considered view that the defendants have acted with *due diligence*, and the present amendment is bona fide and necessary for complete and effective adjudication of the dispute. Accordingly, the present application deserves to be allowed even after the commencement of trial, as it falls within the permissible scope of the proviso to Order VI Rule 17 CPC.

20. The Court is also conscious that at the stage of deciding an application for amendment, the truth or falsity of the proposed pleading is not to be adjudicated. The test is whether the amendment is necessary for proper adjudication of the case. In the present case, it is found that allowing the amendment will assist in determining the real controversy and in avoiding multiplicity of proceedings.

21. After applying the aforesaid parameters, this Court is of the considered view that the proposed amendment is based on a material development i.e. the death of defendant no. 1 and her

alleged execution of a registered *Will* in favour of defendant no. 2. The defendants wish to plead this fact to assert rights flowing from the said alleged *Will*. The present amendments do not alter the fundamental nature of the defence nor take the plaintiff by surprise, as the effect of the said *Will* can still be contested at trial. The plaintiff would retain full opportunity to challenge the validity, execution and genuineness of the said *Will* through evidence. Furthermore, in case any additional or consequential issues arise from the amended pleadings, the Court may consider framing additional issues at the appropriate stage, so as to ensure a full and fair trial on all material questions in controversy.

22. Therefore, in the light of aforesaid discussions and findings, the present application is hereby ***allowed***. Amended written statement is taken on record. Application is disposed of accordingly.

23. Nothing in the present order shall tantamount to expression of opinion of this court on the merits of the case.

(Typed to the dictation directly, corrected and pronounced in open court on 20.05.2025).

(GAURAV)
DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI
20.05.2025