

CS 729/21
**NARESH CHANDER SABHARWAL Vs. VINEET
SABHARWAL AND ANR**

27.11.2024

At 1:15pm

Present: Sh. G.L. Taneja, Ld. Counsel for plaintiff along with SPA of plaintiff namely Sh. Nitin Sabarwal in person.

Sh. Avdhesh Kumar, Ld. counsel for D-1 along with D-1 in person.

Sh. Umesh Kumar Pal, Ld. counsel for D-2.

Matter is listed for reply and arguments on the application under Order VI Rule 17 CPC.

Reply to the application under Order VI Rule 17 r/w Section 151 CPC, application under Order VI Rule 18 CPC and application under Section 379 BNSS Act, 2023 filed on behalf of D-1. Copy supplied.

Ld. counsel for D-1 submits that he will file the application under Section 379 BNSS Act, 2023 separately and therefore, he may be permitted to withdraw the same.

Heard.

In view of the submissions, present application under Section 379 BNSS Act, 2023 is **hereby dismissed as withdrawn with the liberty to D-1 to file fresh application, as per law.**

Application under Section 379 BNSS Act, 2023 is accordingly disposed of.

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Arguments heard on the application under Order VI Rule 17 r/w Section 151 CPC.

Ld. counsel for plaintiff submits that plaintiff has filed the present suit seeking possession of basement and 2nd floor of the property bearing no.K-62A, Krishna Nagar, Delhi-51 against defendants. It is further pleaded that plaintiff is the owner of entire property bearing no.K-62A, Krishna Nagar, Delhi-51 by virtue of registered Will dated 17.08.1992 executed in favour of plaintiff by his mother. It is also pleaded that defendants are in possession of the basement and second floor of the aforesaid property being the licensee, however, the same has been revoked/terminated but even thereafter, defendants have not vacated the basement and second floor of the subject property. It is further submitted that by way of present application, plaintiff wants to add para no.1(a) in the plaint thereby explaining as to how Smt. Sushila Devi, mother of the plaintiff, became the absolute owner of the subject property and she was having a right to execute the registered Will in favour of plaintiff. Ld. counsel for plaintiff submits that proposed amendment shall not change the nature of suit. He further submits that by way of proposed amendment, plaintiff is not adding any cause of action. He further submits that no prejudice would be caused to the defendants, however, it will help this court to determine and adjudicate the real controversy involved in the present suit. It is further submitted that present application may kindly be allowed.

Per contra, Ld. counsels for defendants submit that present application is a gross abuse of process of law and the

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same is liable to be dismissed with heavy cost. They further submit that the issues have already been framed and now, the matter is listed for PE and this is not a stage to amend the plaint. It is further submitted that plaintiff has not approached this Court with clean hands and suppressed the material facts. It is further submitted that plaintiff by way of proposed amendment wants to change his own stand taken in the replication in which he has denied about the ownership of Sh. Sohan Lal in respect to subject property. It is further submitted that by way of proposed amendment, plaintiff wants to review the order dated 08.11.2023 vide which plaintiff was only permitted to amend para no.18 of the plaint. It is further submitted that the present application is the third application for amendment of plaint and no good cause has been mentioned by the plaintiff which precluded him from filing the present application at earlier stage. It is further submitted that the plaintiff has also not complied with the order dated 25.01.2024 till date and has not filed the amended plaint, therefore, the earlier amendment be struck off in view of the provision under Order VI Rule 18 CPC. It is further submitted that the present application deserves to be dismissed with heavy cost.

Heard.

File perused.

The plaintiff in the original plaint has specifically pleaded that he is the absolute owner of the entire property bearing no.K-62A, Krishna Nagar, Delhi-51 by virtue of registered Will dated 17.08.1992 (which was executed by her

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mother in his favour). By way of proposed amendment, plaintiff wants to add para no.1(a) in the plaint wherein he has mentioned/pleaded as to how her mother Smt. Sushila Devi became the owner of the subject property and she was having a valid right to execute a Will in favour of plaintiff. Perusal of the relinquishment deed shows that initially, Sh. Sohal Lal is the owner of the subject property and after his death, the other LRs of Sh. Sohan Lal has executed a relinquishment deed in favour of Smt. Sushila Devi, in respect to subject property. The plaintiff wants to plead the facts mentioned in the said relinquishment deed which entitles Smt. Sushila Devi to execute a Will in favour of plaintiff. The relinquishment deed dated 17.08.1992 is a chain of title documents pertaining to the subject property.

Considering the nature of proposed amendment, this Court is of the view that the proposed amendment shall not change the nature of suit and no prejudice shall be caused to the defendants. However, the proposed amendment is only explaining the ownership rights of the plaintiff in the subject property.

The present matter is at the stage of PE, however, till date no plaintiff witnesses have been examined and trial has not yet commenced in true sense.

It is settled law that procedural prescriptions are the handmaid of justice and not its mistress. Procedure and law are meant to advance justice, not to be used to thwart it on technical grounds. Procedural defects or irregularities that are curable should not be allowed to defeat substantive rights or cause

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injustice. The procedural rules are meant to serve justice, not to get in the way of it.

Considering the facts and circumstances of the case and above discussions and also considering that defendants shall be having a right to cross examine the plaintiff on the abovesaid facts as well as on the relinquishment deed, therefore, the application under Order VI Rule 17 r/w Section 151 CPC stands allowed subject to cost of Rs.12,500/-. Part cost of Rs.7,500/- shall be paid to defendants equally and part cost of Rs.5,000/- be deposited in the account of Bar Council of Delhi Indigent & Disabled Lawyers (Account bearing no.010104000183451 maintained with IDBI Bank, Sirifort Branch, New Delhi).

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

Amended plaint already filed on 27.08.2024. Same be taken on record.

As the amended plaint filed on 27.08.2024 is taken on record, application under Order VI Rule 18 CPC is also stands dismissed.

Application under Order VI Rule 18 CPC is accordingly disposed of.

Defendants are directed to file their respective written statements of the amended plaint within 30 days from today with an advance copy to plaintiff.

Plaintiff is at liberty to file replication to the written statements of defendants, if any within 15 days thereafter with an advance copy to respective defendants.

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Put up for compliance and PE on **22.01.2025**.

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

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
27.11.2024