

no.1 has also admitted in his reply that the said school was started and set up by the father of the plaintiffs and defendant no.1 in 1993. It is further averred that the abovesaid school was initiated and started by the father of the plaintiffs and defendant no.1 and was run in the premises exclusively purchased and owned by the father. Therefore, the said school should also be treated as joint family property for the purpose of the present suit, which was inadvertently left to be included in the schedule of the properties. Therefore, the plaintiffs may be permitted to amend the plaint upto the extent of said property and they seek an opportunity to amend the plaint by inserting a new paragraph no.8A in the plaint as well as insertion of "Schedule C" in the prayer para no. (a) and (b) corresponding to new proposed paragraph 8A. It is further averred that in corresponding to the abovesaid proposed amendment by way of insertion of abovesaid para 8A, the plaintiffs also wish to amend prayer clause of the original plaint by inserting "Schedule C" in para no. (a) and (b) of the prayer. It is further averred that the prayer and premises sought in the present application are bonafide as the plaintiffs genuinely and inadvertently missed out mentioning the abovesaid schedule-C in the original plaintiff. It is further averred that it is altogether not an amendment of a plaintiff seeking insertion of new information or property because the detail of the school was already mentioned in the original plaint, however, it was not included as a separate schedule in the prayer. The purpose of the present application is to remove the clerical mistake which was inadvertently caused in the plaintiff. It is further averred that there is a prime facie case in favour of the plaintiffs and there is likelihood that the plaintiffs will succeed in

the present case. The balance of convenience also lies in favour of the plaintiffs. However, the plaintiff shall suffer irreparable loss and injury if the defendants succeed in their ill motives. Therefore, in view of the above, it is crystal clear that the proposed amendment of the plaint by the plaintiffs is necessary for the just adjudication of this case, Hence, the present application.

The defendant no.1 has filed reply to the present application denying all the assertions made therein and has prayed for dismissal of the said application.

No one appeared on behalf of LRs of deceased defendant no.2 to contest the application under Order VI Rule 17 CPC.

Ld. counsel for plaintiffs as well as ld. counsel for defendant no.1 both have filed their written arguments on application under Order VI Rule 17 CPC.

I have perused the written submissions filed on behalf of the plaintiffs and defendant no.1.

It is the contention of the plaintiffs in written arguments that the said school is the joint family property and being legal heir of their deceased father each of the plaintiff as well as defendant are owner of equal share as per law of partition. It is further contended that the purpose of Order VI Rule 17 CPC is to promote ends of justice and not to defeat the law, hence the amendment sought by the plaintiffs is necessary to determine the controversy between the parties and suit is also on initial stage. It is further contended that amendment sought in the present application will not cause any injury to the opposite party while being the joint family property. It is further contended that the proposed amendment of the plaint is necessary for the just and

fair adjudication of the present suit and therefore, it is prayed to allow the present application in the interest of justice.

Per contra, it is contended by defendant no.1 in written arguments that by way of present application the plaintiffs now want to add one more opportunity in schedule of properties left by their father i.e. Ankur Shiksha Sadan Public School as Schedule C. It is further contended that said school has never been the property of late Sh. Ram Niwas Panchal but is run by a registered society and as such is not part of estate of deceased Ram Niwas Panchal and hence cannot be subject matter of partition. It is further contended that the plaintiffs are well aware that the school was never owned or part of estate of Sh. Ram Niwas Panchal and as such was not part of schedule of properties in respect whereof partition was sought by the plaintiffs inspite of the fact that the same duly referred to in the original plaint. It is further contended that present application is filed with the male fide intention to delay the case and in view of the above facts and submissions plaintiff cannot be permitted to amend the suit.

I have considered the submissions made by both the parties and perused the record.

Before proceeding further, it would be appropriate to reproduce Rule 17 of Order VI CPC 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.”

On perusal of record, it appears that the instant suit is at a very initial stage and trial is yet to be started. Moreover, no issues are framed till date although the defendant no.1 has filed its written statement. Therefore, this court is of the opinion that amendment is very much necessary to determine the real controversy between the parties and to meet the end of justice and not to defeat the law. Moreover, as the defendants will get ample opportunity to file amended written statements on the proposed amendment, therefore, this court finds no ground to believe that the defendants will suffer any injury if the prayer of the plaintiffs is allowed. Accordingly, the present application of the plaintiffs is hereby allowed.

The plaintiffs is directed to file amended plaint by incorporating the proposed amendments. They are also directed to supply advance copy of amended plaint to opposite parties 10 days before next date of hearing, who in turn would file amended written statements, if any within stipulated period.

Application is disposed off accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 31.08.2023).

**(RAMESH KUMAR-II)
ADDL. DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI**