

02.08.2017

Present: Sh. R. P. Kaushik, counsel for the plaintiff with  
plaintiff.

Sh. Vandana S. Bhandari, counsel for defendants  
with defendant no.1.

Today, the matter is listed for PE, however, an application has been moved on 22.07.2017, on behalf of the defendants under Order 14 Rule 5 read with Section 151 CPC seeking amendment in issue nos.1 & 5 framed on the last date of hearing i.e. 10.07.2017 and framing of additional issues submitting *inter alia* that issue no.(i) is required to be amended in view of the fact that the suit has been instituted by Special Power of Attorney holder and it is for the plaintiff to prove as to Whether the plaint has been signed and verified properly **and the plaint has been filed and instituted by a duly authorised person.** Amendment in issue no.(v) has also been sought to the effect that **Whether the late husband of the defendant Gurmeet Singh during his lifetime and after his death defendant no.1 raised and completed** the construction on the suit property with their own money, savings and income, **and onus to prove this was placed on**

**defendants.** An additional issue also prayed to be framed to the effect that **Whether the right of the plaintiff is extinguished and the plaintiff is not entitled to the relief on the principles to estoppel, waiver and acquiescence and onus to prove would be placed on defendants.**

Counsel for the plaintiff vehemently objects to the application and seeks time to file reply.

Request is declined as the issues arose out of the pleadings of the parties and the court has power under Order 14 Rule 5 CPC to frame an additional issue and amend the issues.

Heard.

I am in agreement with contention raised by applicants/defendants. As far as issue no.(i) is concerned, the plaintiff has instituted the present suit through Special Power of Attorney Holder and hence it is for the plaintiff to prove this issue in affirmative. The amendment sought in issue no.(v) and for framing additional issue, is allowed and onus to prove both these issues is placed on the defendants. Application stands disposed off accordingly. The issues are amended accordingly.

**In view of amendment in issue no. (i) and (v) framed on 10.07.2017 and framing of additional issue today, Ahlmad is directed to make an endorsement on the order sheet dated 10.07.2017 to the effect that amendment has been made in issue no. (i) and (v) and one additional issue has been framed today.**

In view of amendment in issue no.(i) and (v) framed on 10.07.2017 and framing of additional issue today, issues framed by this court on 10.07.2017 are re-numbered and re-structured as follows (including the additional issue framed today) :-

### **ISSUES**

- i). Whether the plaint has not been signed and verified properly **and the suit has been filed and instituted by a duly authorised person?** OPP.
- ii). Whether the plaint does not disclose the cause of action ? OPD.
- iii). Whether the suit has been under valued for the purpose of jurisdiction and proper court fees has not been affixed ? OPD.
- iv). Whether the suit property bearing no. 28 (New no. WZ-15-C/3, Manas Kunj, Uttam Nagar, New Delhi, (as shown in red colour in the site plan) has been gifted by the plaintiff to her son Gurmeet Singh ? OPD.
- v). Whether the **late** husband of defendant Gurmeet Singh **during his life time and after his death defendant no.1** raised **and completed the** construction on the suit property with their own money, savings and income ? OPD.
- vi) **Whether the right of the plaintiff is extinguished and the plaintiff is not entitled to the relief on the principles of estoppel, waiver and acquiescence?** OPD

vii). Whether the plaintiff is entitled to a decree of possession in respect of the suit property, as prayed for ?  
OPP.

viii). Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for ?  
OPP.

ix). Whether the plaintiff is entitled to a decree for recovery of Rs. 2,25,000/- against the defendant, as prayed for ?  
OPP.

x). Whether the plaintiff is entitled to a decree of damages and mesne profits, as prayed for ?  
OPP.

xi). Relief.

No other issue arises or is pressed for.

List of witnesses on behalf of defendants is filed today.

At this stage, counsel for the plaintiff seeks time to file list of witnesses and to lead PE.

Counsel for the parties as well as plaintiff and defendant no.1 who are present in person submit that the matter is likely to be settled between the parties. At their joint request, the matter be referred to Mediation Centre, Dwarka Courts, New Delhi for 09.08.2017 at 2.00p.m. and for report on settlement, failing which for PE on the date already fixed i.e. 01.09.2017.

(MOHD. FARRUKH)  
ADJ (SW)/PILOT COURT/ DWARKA COURTS(an)  
02.08.2017