

18.09.2024

Present: Sh. Piyush Chhabra, Ld. Counsel for the plaintiff.
Sh. Kuwar Anit Tripathi, Ld. proxy counsel for Sh. Abdul Sattar, Ld. counsel for defendant no. 1.
Defendant no. 2 and 3 already proceeded *ex-parte* vide order dated 31.05.2024.

Matter is listed on arguments on application u/o VI Rule 17 CPC filed on behalf of plaintiff. However, pass over sought on behalf of defendant no. 1 for 12:30 PM.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 18.09.2024

At 12:30 PM

Present: Sh. Piyush Chhabra, Ld. Counsel for the plaintiff.
Ld. proxy counsel for Sh. Abdul Sattar, Ld. counsel for defendant no. 1.
Defendant no. 2 and 3 already proceeded *ex-parte* vide order dated 31.05.2024.

1. Arguments heard on pending application u/o VI Rule 17 CPC.
2. Briefly stated, present suit for Declaration and Permanent injunction w.r.t. property bearing no. B-2/7, Shri Agarsen Apartment, Plot no. 10, Sector-7, Dwarka, New Delhi-1100075 (hereinafter referred '*suit property*') filed on behalf of plaintiff being LR of Late Sh. Harish Chandra Bakshi. It is averred that Late Sh. Harish Chandra Bakshi was the absolute

owner of the suit property and outcasted defendant no. 1 from his life and property during his life time. It is also averred that thereafter, settlement agreement dt. 07.08.2002 was entered between Late Sh. Harish Chandra Bakshi and defendant no. 1 and Rs. 2,00,000/- was paid as full and final settlement qua share in suit property. It is further averred that Late Sh. Harish Chandra Bakshi left for heavenly abode on 21.01.2014, thereafter, defendant no. 2 and 3 executed registered relinquishment deed dt. 17.01.2020 in favour of plaintiff. Hence, present suit was filed with following prayer:

- 1) Pass a declaring decree that surviving legal of declaration the Defendants, heirs of thereby who are Late Sh. H.C.Bakshi, have no right and claim over the suit property;*
- ii) Pass a decree of injunction against the Defendant no.1, thereby restraining him from creating any hindrance in the peaceful possession of the Plaintiff property, in the Plaintiff; of suit*
- iii) Pass decree of injunction against the a defendant no.1, thereby baring him from communicating with the Plaintiff husband children, and further restraining Defendant no. 1, his wife and children from misrepresenting property as whatsoever. their own for the suit any purpose*
- iv) Any other relief this Hon'ble Court may deem fit in favour of the Plaintiff and against the Defendants in the interest of justice.*

3. Record reveals that, summons were issued to defendants and in his WS, defendant no. 1 claimed absolute ownership qua suit property by virtue of Will dt. 24.06.2011 purportedly executed by Late Sh. Harish Chandra Bakshi. Thereafter, first application u/o VI Rule 17 CPC filed on behalf of plaintiff alongwith application u/s 340 Cr.P.C. thereby seeking following prayer in the amended plaint:

- (i) Pass a decree of declaration thereby declaring that the Defendants, who are surviving legal heirs of Late Sh. H.C. Bakshi, have no right and claim over the suit property; or in alternative Suit Property may be portioned as per law of Succession.*

- ii) *Pass a decree of permanent and mandatory injunction in favour of the Plaintiff and against the Defendant No. 1 directing the Defendant No. 1, his agents, associates, heirs, attorneys etc. to remove his locks and reinstate the physical possession of the suit property to the Plaintiff and restraining them from creating any hindrance in the peaceful possession of the Plaintiff of suit property;*
- iii) *Pass a decree of injunction against the defendant no.1, thereby barring him from communicating with the Plaintiff or her husband and children, and further restraining Defendant no. 1, his wife and children from misrepresenting the suit property as their own for any purpose whatsoever.*
- iv) *'Declare the 'Will' dated 24.06.2011 null and void, it being a forged and fabricated document and legally untenable;*
- (v) *'The report dated 03.05.2021 of the Expert Opinion under Section 45 of the Indian Evidence Act may kindly be used as evidence',*

OR,

'To direct the Defendant no. 1 to produce the original Will before the Hon'ble Court so that the same may be sent for FSL to access its Genuity'.

- vi) *'To direct the Defendant no. 1 not to create any third-party interest in the suit property until the pendency of the suit'.*
- vii) *Pass an ex-parte order in favour of the Plaintiff that the keys of the suit property shall either be handed to the Plaintiff or be in court custody, till the disposal of the matter.*
- viii) *Any other relief this Hon'ble Court may deem fit in favour of the Plaintiff and against the Defendants in the interest of justice.*

4. Record reveals that vide order dt. 24.11.2023, said application was allowed with cost and written statement to the amended plaint filed on behalf of defendant no. 1 being contesting party.

5. Record further reveals that vide order dt. 16.02.2024 following issues were framed:

- 1. *Whether suit is liable to be dismissed being under-valued and deficient court fees? **OPD***
- 2. *Whether plaintiff is entitled for decree of declaration against Will dt. 24.06.2011 to be declared as null and void being forged and fabricated document as prayed for? **OPP**.*

3. *Whether plaintiff is entitled for decree of declaration as absolute owner for property bearing no. B-2/7, Sri Agrasen Apartment, Plot no. 10, Sector-7, Dwarka, New Delhi-110075 as prayed for? **OPP.***
4. *Whether plaintiff is entitled for decree of permanent injunction against defendant no. 1 as prayed for? **OPP.***
5. *Whether plaintiff is entitled for the cost of the suit? **OPP.***
6. *Relief.*

6. Now, in present second application u/o VI Rule 17 CPC, plaintiff seeking amendment in the plaint mainly to include the relief for possession. It is submitted that at the time of institution of present suit, possession of suit property was lying with the plaintiff while on 30.12.2020 when plaintiff visited suit property, he found that defendant no. 1 replaced lock of plaintiff by breaking the same and replacing with his own.

7. It is further submitted that due to some inadvertent mistake no specific relief of possession was sought in the first amendment. Hence, in present amendment plaintiff is specific seeking following prayer :

- i. *Pass a decree of declaration thereby declaring that the Defendants, who are surviving legal heirs of Late Sh. H.C. Bakshi, have no right and claim over the suit property or in alternative suit property may be partitioned as per law of Succession;*
- ii. *Pass a decree of permanent and mandatory injunction in favour of the Plaintiff and against the Defendant No. 1 directing the Defendant No. 1, his agents, associates, heirs, attorneys etc. to remove his locks and reinstate the physical possession of the suit property to the Plaintiff and restraining them from creating any hindrance in the peaceful possession of the Plaintiff of suit property;*
- iii. *Pass a decree of injunction against the defendant no.1, thereby barring him from communicating with the Plaintiff or her husband and children, and further restraining Defendant no. 1, his wife and children from misrepresenting the suit property as their own for any purpose whatsoever;*

- iv. *'Declare the 'Will' dated 24.06.2011 null and void, it being a forged and fabricated document and legally untenable;'*
- v. *'The report dated 03.05.2021 of the Expert Opinion under Section 45 of the Indian Evidence Act may kindly be used as evidence';*

OR,

- vi. *'To direct the Defendant no. 1 to produce the original Will before the Hon'ble Court so that the same may be sent for FSL to access its Genuity';*
- vii. *'To direct the Defendant no. 1 not to create any third-party interest in the suit property until the pendency of the suit';*
- viii. *Pass an ex-parte order in favour of the Plaintiff that the keys of the suit property shall either be handed to the Plaintiff or be in court custody, till the disposal of the matter;*
- ix. *Any other relief this Hon'ble Court may deem fit in favour of the Plaintiff and against the Defendants in the interest of justice.*

8. *Per contra*, Ld. counsel for defendant no. 1 vehemently opposed the present application filed on behalf of plaintiff. It is submitted that present application has not merit in the eye of law and same is barred due to broad principal of *res-judicata* and under order II Rule 2 CPC. It is also submitted that plaintiff failed to show any diligence on his part as prescribed u/o VI Rule 17 CPC. It is also submitted that no relief of possession can be subsequently sought when cause of action already arisen at initial stage.

9. It is well settled principle that amendment of pleadings under Order VI Rule 17 CPC¹ cannot be allowed so as to alter materially or

¹ Order VI Rule 17 CPC Amendment of pleadings.

The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

substitute cause of action or the nature of claim applies to amendments to plaint.

10. It is also well settled law that, while considering an amendment application, a court ought not to enter into the merits of the amendment itself, but rather confine its inquiry for the purpose of determining whether the same is necessary for the purpose of determining the real question in controversy between the parties; to determine that the application is not malafide or an attempt to delay the proceedings; and to determine that the plaintiff is not attempting to set up a totally new case.

11. This court carefully gone through the proposed amendment and is of the consider opinion that, 'proposed amendment' is necessary in determining the real question in controversy between the parties and for final adjudication of entire dispute. However, at the same time, it cannot be ignored that issues are already framed and matter is at the stage of PE. Plaintiff should have been more diligent to incorporate proper prayer at the time of first amendment. Thus, present application stands allowed subject to payment of cost of Rs. 15,000/- to the defendant no. 1. Amended plaint is taken on record. Written statement to the amendment plaint be filed within 4 weeks with advance copy to plaintiff.

12. Put up for further proceedings on **23.11.2024**.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 18.09.2024