

IN THE COURT OF SH. HASAN ANZAR, ADJ-06
WEST DISTRICT, TIS HAZARI COURTS

CS No. 612542/16

Chhaya Kaushik

.....Plaintiff

Versus

Varsha Sharma

.....Defendant

Date reserved for Order: 24.11.2018

Date of Order: 15.12.2018

ORDER

1. This order shall dispose of the application under Order 6 Rule 17 CPC filed by plaintiff.
2. Parties to the litigation are two real sisters.
3. The grounds on the basis of which amendment has been sought by plaintiff is that in the WS filed by defendant, reference was made that both plaintiff and defendant have executed a relinquishment

deed dated 04.10.2012 in favour of Smt Urmila Sharma (mother of parties), (ii) mother of parties have executed Will dated 18.08.2015 in favour of defendant and (iii) mother of defendant has revoked her previous Will.

4. Submission of plaintiff is that Relinquishment deed dated 04.10.2012 and Will dated 18.08.2015 came to her knowledge after filing of WS. It is further submitted that both Relinquishment deed dated 04.10.2012 and Will dated 18.08.2015 are false and fabricated documents.

5. It was also averred that at the time of Relinquishment deed dated 04.10.2012, the plaintiff was minor and certain other inaccuracies were pointed out towards due execution of RD in the plaint. It is also submitted that in view of the stand taken in the WS, the plaintiff seeks permission of the Court to make necessary amendment in her pleadings with regard to the relief of declaration in respect of Relinquishment deed dated 04.10.2012 and Will dated 18.08.2015 as forged and fabricated and that other consequential amendments were also sought in the prayer clause.

6. Defendant has filed reply to the application and has submitted that Relinquishment deed dated 04.10.2012 was executed in

between the plaintiff and defendant and same was notarized on 17.10.2012 and pursuant thereof mother of parties sold the share against valuable consideration. It was also pleaded that registered Will was executed in favour of defendant. It was further pleaded that plaintiff is basically trying to correct her mistake by seeking cancellation of Relinquishment deed dated 04.10.2012 and Will dated 18.08.2015 of Smt Urmila Sharma. It is further submitted that amendment should not be allowed as same is not made in good faith and plaintiff should not be permitted to withdraw the admission.

7. Ld counsel for defendant has relied upon the judgment passed by Hon'ble Supreme Court of India in the matter of **Bharat Karsondas Thakkar Vs. M/s. Kiran Construction Co & Ors, 2008 AIR SCW 3192** and **M/s Modi Spinning & Weaving Mills Co Ltd V/s. Latha Ram AIR 1977 SC 650**.

8. I have considered the rival submission of ld counsel for the parties.

9. Plaintiff has filed the present suit for partition. As per plaintiff, she came to know about execution of Relinquishment deed dated 04.10.2012 and Will dated 18.08.2015 subsequent to the filing of WS by defendant. It is also the case of the plaintiff that

Relinquishment deed dated 04.10.2012 is forged and fabricated and other factual averment pointing out inaccuracies in the Relinquishment deed dated 04.10.2012 and Will dated 18.08.2015 was made by the plaintiff.

10. In my opinion, the present suit is a suit for partition where both claimants are claiming the right towards the suit property and these questions would require complete adjudication. The plaintiff by way of present amendment has also sought the relief of declaration in respect of Will dated 04.10.2012 and Relinquishment deed dated 04.10.2012 as pleaded by defendant in her WS and therefore it would be in the interest of justice if application for amendment is allowed and plaintiff is allowed to plead her case to the fulness extent. The amendment as sought aid in just disposal of the case and the case is at initial stage. Therefore, application for amendment is allowed. Amended plaint already filed, taken on record. Defendant is permitted to file amended WS within four weeks with an advance copy to ld counsel for plaintiff.

Announced in the Open Court

on 15.12.2018

(Hasan Anzar)
Additional District Judge-06
West District, THC