

**In The Court of Charu Aggarwal
Additional District Judge-03 (West)
Tis Hazari Courts, Delhi**

Suit No.10715/2016

In the matter of :-

Sheela Meena **Plaintiff**

versus

Suresh Kumar Meena and anr. **Defendants**

**ORDER
07.03.2018**

1. Vide this order, I shall decide an application u/o 6 rule 17 CPC filed by defendant no.2 for amendment in his written statement.

2. Brief facts relevant for deciding the present application are that the plaintiff has filed a suit for recovery of Rs. 5,35,000/- against two defendants. Defendant no.2 is the husband of plaintiff. Plaintiff has filed the present suit for recovery of damages on the pretext that both the defendants in collusion with each other filed frivolous civil suit bearing no. 346/2010 claiming that defendant no.1 is the tenant and defendant no.2 is the owner the property bearing no. DA-109F, LIG DDA Flat, Hari Nagar, Delhi. The plaintiff has contended in the suit that she is the owner of said property by virtue of sale deed dated 03.10.2003, therefore, the said civil suit bearing no. 346/2010, was frivolous and false suit by the defendants who are in hands in gloves with each other. It is stated that the said suit was filed by defendant no.1 against defendant no.2 (herein) and plaintiff. The said suit was dismissed on 27.09.2010. It is alleged that the due to the said frivolous suit filed by the defendants in collusion with each other, she has suffered mental agony, trauma and harassment, hence the present suit.

3. Both the defendants have filed their separate written statements. Defendant no.2 has filed the present application for amending his written statement, stating therein that inadvertently he did not take the legal objections in the written statement regarding the maintainability of the present suit on the ground that without seeking relief of declaration regarding the ownership of the property in question, the plaintiff cannot file any suit for damages in respect of the suit property.
4. In reply, it is stated by the plaintiff that the amendment sought by defendant no.2 is not necessary to decide the real controversy between the parties.
5. Ld.counsel for plaintiff has argued that the defendant no.2 has filed a suit for declaration qua the suit property which is pending in the court of Ms. Reena Singh Nag, Ld.Additional Principal Judge, Family Court, therefore, the amendment sought to be incorporated in the written statement by defendant no.2 is of no consequence. Counsel has further argued that defendant no.2 by incorporating the amendment sought by him in the written statement is trying to delay the present case so that in future he may raise the objections that the present suit be stayed u/s 10 CPC on the ground that the title of the suit property is already subjudiced in another suit, therefore, the proceedings of this matter be stayed.
6. The case is at the initial stage. The issues have not been framed yet. The amendment sought by defendant no. 2 is not going to prejudice the plaintiff in any way as it is only the legal objection sought to be incorporated in the written statement of defendant no.2. Defendant no.2 by way of amendment is only taking a legal objection regarding the maintainability of the suit that the suit for money recovery is not maintainable without seeking the relief of

declaration. It is settled law that while deciding the applications u/o 6 rule 17 CPC, the court is not required to go into the merits or demerits of the case. In this regard, reference can be made to **Raj Kumar Bhatia vs Subhash Chander Bhatia, Civil Appeal no. 19400/17 decided by Hon'ble Apex Court on 15.12.2017**. It is a prerogative of the parties to take any plea or defence in their respective pleadings.

7. Considering that the matter is at the initial stage and the issues have not been framed till date, application u/o 6 rule 17 CPC filed by defendant no.2 is allowed. Amended written statement is already on record. Put up for replication, admission/denial of documents and framing of issues on 23.04.2018.

(Charu Aggarwal)
ADJ-03/West Distt./THC/Delhi
07.03.2018

CS No.3459/2016

Gurmit Singh vs Tarlochan Singh

24.02.2018

Present: None for the parties.

Vide my separate order, application u/o 6 rule 17 CPC of the defendant is dismissed.

Put up for PE on 22.05.2018.

(Charu Aggarwal)
ADJ-03/West Distt./THC/Delhi
24.02.2018