

**IN THE COURT OF SH SHIV KUMAR
DISTRICT JUDGE-02 (WEST),
TIS HAZARI COURTS, DELHI**

PC no. 51/22

OM Parkash Dawar

Vs

State & Ors.

**ORDER ON APPLICATION UNDER ORDER VI RULE 17
R/W SECTION 151 CPC FOR AMENDMENT OF PLAINT
MOVED ON BEHALF OF THE PETITIONER.**

1. Vide this order, I shall decide the application moved u/o 6 rule 17 read with section 151 CPC, on behalf of the petitioner.

2. It is averred in the application that deceased Smt Wanti Devi had executed a Will dated 10.12.2019 in respect of property bearing no. 3/106, Subash Nagar, New Delhi, in favour of her husband's brother Mr. Om Prakash Dawar/petitioner. It is further averred that the said Will is the last Will of the deceased and all legal heirs consented that the property mentioned in the Will be transferred in the name of petitioner.

3. It is further averred in the application that at the time of filing of the plaint, inadvertently some typographical error have

been made in the plaint, which are as under:

a. in the heading of petition under Section 272 of Indian Succession Act 1956 should be 1925 for Grant of Probate and date of Will executed by Late Mrs. Wanti Devi dated 11.02.2020 . should be 10.12.2019.

b. In para 2 page 2, the place of residence of petitioner

c. In para 6 of the plaint, date of death of father of the respondents wrongly mentioned as 19.09.2020 in place of 29.09.2020.

d. In para 11, wrong names of attesting witnesses have mentioned. It is averred that inadvertently, it is mentioned that the signatures of the testator on the said Will was done before Mr. Surender Arora and Mrs. Arun Bala, they are the attesting witness of the said Will whereas the actual names of the attesting witnesses should be Mr. Kewal Krishan and Mr. Mohan Chander.

5. Reply of the present application has been filed on behalf of respondent no. 2 and 4.

6. Arguments heard. Case file perused.

7. As per order 6 Rule 17 CPC, 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 made as may be necessary for the purpose of determine the real questions in controversy between the parties.

8. The Hon'ble Supreme Court of Delhi in the case title as **“Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr, (2006) 1 SCC, 75** Supreme court has observed that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It is further observed by Hon'ble Apex court that procedure a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

9. The Hon'ble Supreme Court of Delhi in the case title as **“Life Insurance Corporation of India Vs Sanjeev Builders Private Limited & Anr, 2022 live law (SC) 729** held as follows.

70 our final conclusion may be summed up thus:

(XI) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

10. By way of present application, the petitioner wants to correct the year of Indian Succession Act, date of Will from

11.02.2020 to 10.12.2019, place of residence of petitioner, date of death of father of respondents & names of attesting witnesses of Will dated 10.12.2019.

11. I have perused the case file. The petitioner has attached the death certificate of deceased, Late Smt Wanti Dabar with his original petition, in which the date of death is 11.02.2020. In the Aadhar card of petitioner, the address is mentioned as 3/47, Subhash Nagar, Tagore Garden, S.O, West Delhi-110027. In the Will attached with the original petition, the date of the Will is 10.12.2019 and the name of the attesting witnesses are Sh. Kewal Krishan and Sh. Mohan Chander Joshi.

12. The abovesaid facts established that the application of petitioner filed under order 6 rule 17 CPC is corroborated with abovesaid documents. There is force in the contention of Ld counsel for petitioner that inadvertently, he mentioned wrong facts due to clerical mistake in the main petition.

13. In the present case, the issues have not yet been framed and the case is at initial stage, therefore, no prejudice will be caused to the respondents, if the present application is allowed as the sought amendments do not change the nature of the suit and no vested right has been withdrawn from the respondents by way of the sought amendments.

14. In view of the above-said observations, the present

application stands **allowed**, subject to payment of cost of Rs.
3,000/- to be paid to the respondent no.2 to 4.

Application stands disposed off accordingly.

(SHIV KUMAR)
District Judge-02, Court no.127,
West Distt, Tis Hazari courts
Delhi: 10.01.2025