

Title Partition Suit No. 01 of 2024 (CIS 01/2024)

WB 01110

Order No. 17 Dated 14.05.2025

Today is fixed for passing order relating to the petition filed by defendant no. 1 under Order VI Rule 17 read with section 151 of CPC filed by the defendant on 05.02.2025.

Plaintiff filed W/o against the petition on 21.04.2025.

By filing the instant petition the defendant prayed for incorporating the fact regarding the mode of acquiring right, title and interest of defendant no. 1 over the C Schedule property which as per the defendant was inadvertently missed in the original W/s. The defendant no. 1 prayed for incorporating those fact after para no. 15 by adding a para no. 15(a) along with the said petition, defendant no. 1 also annexed the photocopy of the documents on the basis of which the pleading under para no. 15(a) intends to be incorporated.

By filing the W/o, the plaintiff denied the facts stated in the petition and inter-alia stated that the proposed amendment of W/o made under para 3 of the said application are some repetition of the same facts and some statements are itself contrary to the original pleadings. It is further pleaded by the plaintiff that by the said amendment, the defendants are trying to bypass and cover up the lacuna observed by the Ld. Court and propose amendments is itself contradictory to their own documents and pleadings.

During hearing, the Ld. Advocate for the plaintiff submitted that at the time of passing injunction order, the Court observed that though defendant no. 1, 2 and 3 have inter alia taken pleas that defendant no 1 is the sole owner of the C Schedule property but except one incomplete partition agreement nothing has been produced in order to show their prima facie contention.

The Ld. Advocate for the defendants on the other hand submitted that the draft of a Civil case is prepared on the basis of the document produced by the parties before their Ld. Advocates and the parties being ignorant of all the legal process, it is not always possible for them to produce all the relevant documents at the time of preparation of W/s, for filing of which there is also specific time frame in law. The Ld. Advocate further submitted that from the copy of deed of gift produced by the defendant no. 1 with the petition, it will reveal that the said deed was executed on 9th day of July, 2021 i.e. prior to filing

of the suit. Therefore, there is no chance that the said document is an after thought of defendants.

Considered.

As per Order VI Rule 17 of Code of Civil Procedure, the Court may at any stage of proceeding allow either party to alter or amend his pleadings in such manner and on such term as may be just, and all such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Proviso to Order VI Rule 17 creates an embargo where the Court has to consider the due diligence of the parties before allowing such amendment. In the instant suit, issues have not yet been framed.

It is true that at the time of passing injunction order on contest vide Order no. 13 dated 06.12.2024, this Court observed that though defendant no. 1 has claimed to be the sole owner of C Schedule property, no prima facie documents produced in support of the same. Now the defendant no. 1 has prayed for present amendment and in support of her contention raised in para 15 of the original W/s, she produced the photocopy of the registered deed of gift executed by Mr. Wangchuk Tshering Bhutia and others in favour of defendant no. 1 on 09.07.2021 i.e. three years before filing the suit.

Now so far the Order VI Rule 17 is concerned, it has given power to the Court to allow the amendment of the pleadings i.e. either alter or amend the previous pleadings which are necessary for the purpose of determining the real question in controversy between the parties. Now the defendants have prayed for the instant amendment in order to incorporate the facts regarding mode of her acquisition of interest in C Schedule property and also produced a prima facie document in this regard at a stage when the issues have not yet been framed. It is well settled that evidence cannot be led beyond pleading and if this amendment is not allowed at the time of production of evidence by the defendants, the hands of the Court will be tied in accepting the said registered document in evidence and thereby the real question of controversy could not be adjudicated and same would cause the miscarriage of justice.

On this score, this Court is inclined to allow the petition for amendment filed by defendant no.

Hence, it is

ORDERED

that the petition filed by defendant no. 1 under Order VI Rule 17 dated 05.02.2025 is allowed on contest and disposed of accordingly. The defendant no. 1 is at liberty to amend the pleading in W/s filed on 29.06.2024 in the manner mentioned in the instant petition under Order VI Rule 17.

Fix **13.06.2025** for filing additional W/s.

D/c by me,

-S/d-

CJSD, Kalimpong.

-S/d-

CJSD, Kalimpong.