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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 169/2022 & I.A. 4591/2022, I.A. 11225/2022, I.A.

26215/2023, I.A. 185/2024, I.A. 5236/2024

PREETA SINGH

..... Plaintiff

Through: Mr. Gaurav Sarin, Mr. Abhishek M.
and Mr. Vibhu Jaiswal, Advocates.

versus

NEENA GULERIA

..... Defendant

Through: Mr. V.N. Koura and Mrs. Paramjeet
Benipal, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **11.03.2024**

I.A. 26238/2023

By way of the present application filed under Order VI Rule 17 read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the plaintiff seeks amendment of the plaint premised essentially on what has come to be recorded in Report dated 08.07.2022 submitted by the learned Local Commissioner appointed by court *vide* order dated 24.03.2022.

2. Notice on this application was issued on 22.12.2023; consequent upon which, the defendant has filed reply dated 22.02.2024.
3. The court has heard Mr. Gaurav Sarin, learned counsel appearing for the plaintiff and Mr. V.N. Koura, learned counsel appearing for the defendant.
4. Briefly, the plaintiff submits that the suit, as originally filed, had sought partition and separate possession in respect of property bearing No. Mustatil No. 40, Killa No.25 min situate in the Revenue Estate of



Village : Mehrauli, Tehsil : Mehrauli, New Delhi (also known as property No. B-21, Block B, Avenue-9, Church Road, New Delhi) ('subject property').

5. The defendant is the plaintiff's sister.
6. The plaintiff claims that three contiguous parcels of land were purchased by the two sisters. Out of the three parcels of land, two were held in the individual names of each of the two sisters; and one was held in their joint names. The sisters have thereafter proceeded to construct residential houses on the two plots held individually, while the third is stated to be lying vacant.
7. Though the plaintiff and the defendant had ascribed to the three contiguous plots three separate numbers, being B-20, B-21 and B-22, there seems to be a dispute with regard to the exact location as well as the description of the jointly held plot as reflected in the revenue records. However, the court is not going into the particulars of that dispute at this stage.
8. Mr. Sarin argues, that report dated 08.07.2022 rendered by the learned Local Commissioner has brought to the fore the fact that the defendant has purportedly sold a portion of *her own property bearing No. B-22* (Mustatil No. 41, Killa No. 21/1 min (0-8) and Mustatil No. 40 Killa No. 25 min) to a third party viz. M/s Premium Customer I.T. Services Pvt. Ltd. *vide* a sale deed dated 09.07.2021; but has, on point of fact, put that party in possession of the *plot held jointly by the parties*. To support his submission, Mr. Sarin has drawn attention to the learned Local Commissioner's report dated 08.07.2022. Mr. Sarin argues that this action of the defendant is *mala-fide* and illegal.



9. In this broad backdrop, the plaintiff seeks to amend the plaint in order to press her claim for possession against the third party *i.e* M/s Premium Customer I.T. Services Pvt. Ltd., since it is alleged, that that party has been put in possession of the subject property.
10. Mr. Sarin submits that the registered sale deed of the subject property came to the plaintiff's knowledge only after the learned Local Commissioner tendered his report dated 08.07.2022 before this court.
11. In the circumstances, the plaintiff seeks to amend her plaint as detailed in paras 13 to 26 of the application.
12. Learned counsel for the plaintiff points-out that though pleadings in the matter are complete and affidavits of admission/denial have been filed by the parties, issues are yet to be framed in the suit and trial has not yet commenced. Thus, it is submitted, that the amendments sought would not cause any prejudice to the defendant.
13. On the other hand, Mr. V.N. Koura, learned counsel appearing for the defendant submits, that the court cannot permit the plaint to be amended for three principal reasons : *firstly*, that the plaintiff is seeking to change the nature of the claim in the suit *inter-alia* by claiming possession from a third party; *secondly*, that the plaintiff's claims sought to be made by way of the amendments are time-barred, inasmuch as the plaintiff was aware of the transaction between M/s Premium Customer I.T. Services Pvt. Ltd and the defendant from earlier-on; and *thirdly*, that for claiming possession from a third party, the plaintiff is required to pay *ad-valorem* court fee on the plaint.
14. Upon a conspectus of the contents of the amendment application and the reply filed to it, and the submissions made by learned counsel for



the parties, considered in the context of the prayer made in the suit as originally filed, in the opinion of this court, the following inferences arise :

- 14.1. Admittedly certain third party rights and interests in the subject property have been created in favour of M/s Premium Customer I.T. Services Pvt. Ltd.
- 14.2. By way of the amendments sought, the plaintiff seeks redressal in relation to such third-party rights and interests, that are alleged to have been created in the subject property by the defendant. To this end, the plaintiff seeks to make certain additional allegations and averments in the plaint and certain prayers against the said party.
- 14.3. The plaintiff is not seeking to delete any averment or allegation made in the plaint, as originally filed.
- 14.4. The amendments sought would not change the nature or character of the case since no discordant allegation or assertion is sought to be added to the plaint by way of the amendemnts.
- 14.5. Trial in the matter has yet to commence; and therefore there is no legal bar to allowing the amendments sought.
- 14.6. If the amendments sought were to be disallowed, it would lead to an incomplete adjudication of the rights and contentions of the parties; which would, thereby lead to multiplicity of litigation.
- 14.7. Insofar as the objections taken by the defendant are concerned, the defendant would be at liberty to raise all her objections in the written statement to be filed to the amended plaint, apart



from the liberty available to her to file any appropriate application to agitate the objections raised.

15. It is no longer *res-integra* that all amendments that are *necessary for proper, complete and effective adjudication* of a case; and which *do not fundamentally change the nature or character of the case*; and *most importantly, would prevent multiplicity of litigation* should *ordinarily* be allowed¹.
16. In the circumstances, the court is of the opinion that the amendments sought are *bona fide*, and allowing them would not cause any prejudice to the defendants.
17. As a sequitur to the above, the present application is allowed.
18. The amended plaint filed alongwith the present application is taken on record.
19. The application is disposed-of in the above terms.
20. It is clarified that allowing the present application is not, in any manner, to be construed as an expression of opinion by this court on merits of the plaintiff's claims sought by way of the amendments. All rights and contentions of either side are kept open, to be decided at the time of trial.

I.A. 185/2024

21. By way of the present application under Order I Rule 10 CPC, the plaintiff seeks to implead M/s Premium Customer I.T Services Pvt. Ltd. as defendant No. 2 in the present suit.

¹ *Reevajeetu Builders and Developers vs. Narayanaswamy and Sons & Others*, (2009) 10 SCC 84 at para 63



22. In view of the plaintiff's application bearing I.A. No. 26238/2023 under Order VI Rule 17 CPC having been allowed, it is evident that the said company would be a 'necessary', or at the very least, a 'proper' party to the present proceedings, whose presence would be required for a full and complete adjudication of the disputes raised in the matter.
23. In the circumstances, the present application is allowed, thereby impleading M/s Premium Customer I.T. Service Pvt. Ltd. as party-defendant No.2 to the present suit.
24. The Amended Memo of Parties appended to the application is taken on record.
25. The application is disposed-of.

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26. Defendant No. 1 may file her written statement to the amended plaint within 30 days alongwith affidavit of admission/denial of the documents filed by the plaintiff. The plaintiff may file replication to the written statement within 30 days thereafter alongwith affidavit of admission/denial of the documents filed by the plaintiff; with copies to the opposing counsel.
27. Upon the plaintiff taking requisite steps within 03 weeks, let summons be sent to the newly added defendant No.2 by all permissible modes, returnable for the next date before the learned Joint Registrar.
28. Let the summons indicate that defendant No.2 is required to file written statement to the plaint within 30 days from the date of receipt of summons, alongwith affidavit of admission/denial of the



documents filed by the plaintiff. The plaintiff may file replication to the written statement within 30 days thereafter, alongwith affidavit of admission/denial of the documents filed by defendant No.2.

29. Re-notify before the learned Joint Registrar for completion of pleadings and other proceedings, on 23rd July 2024.
30. List before court thereafter.

I.A. 2971/2024

31. By way of the present application filed under Order VI Rule 17 read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the defendant had sought amendment of the written statement filed to the original plaint.
32. Since, the plaintiff's application bearing I.A No. 26238/2023 under Order VI Rule 17 CPC has been allowed; and defendant No. 1 has been permitted to file her written statement to the amended plaint, this application has been rendered infructuous, and is disposed-of as such.
33. Mr. Koura also submits that it may be clarified, that defendant No.1 may also file her counter-claim, if so advised, in accordance with law. Defendant No. 1 is permitted to do so.

ANUP JAIRAM BHAMBHANI, J

MARCH 11, 2024/V.Rawat