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

+ **CS(OS) 267/2019**

VANDANA SHARMA Plaintiff

Through: Mr. Sanjeev Goyal, Adv.

versus

AMAN MALLICK Defendant

Through: Mr. Prashant Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **22.07.2019**

I.A. 9667/2019 (application under Order VI rule 17 CPC)

1. By way of this application, Plaintiff seeks to amend the plaint by inserting details in respect of suit property i.e. Plot No.B-887, Greenfields Colony, Faridabad, Haryana admeasuring 225.55 square yards and also amend the prayer clause seeking partition thereof.

2. It is the case of the Plaintiff that by way of registered Will dated 22nd November, 2018 executed by Late Smt. Kamla Mallick, the immovable properties mentioned therein were bequeathed equally in favour of Plaintiff and the Defendant. The said two immovable properties are as follows:

a) House No. D- 125, Saket, New Delhi-110017 and;

b) her share in Plot No. B-887, Greenfields Colony, Faridabad, Haryana

admeasuring 225.55 square yards.

3. Learned counsel for the Plaintiff submits that relief qua the property mentioned at Sl. (b) above has inadvertently not been mentioned in the plaint. Accordingly, by way of this application, Plaintiff seeks to add relief of partition qua the said property and also make averments giving details as to how the property came to be acquired by Late Smt. Kamla Mallick.

4. Learned counsel for the Defendants submits that the plea raised in the application for seeking amendment of the plaint does not appear to be genuine. The haste in filing the suit, cited as the reason for leaving out the details of the second property is not bona fide and Plaintiff cannot be permitted to amend the plaint. He further submits that though the partition of the property is sought on the basis of the Will, however since it has not been probated, Plaintiff cannot assert any right thereunder.

5. Be that as it may, Court at this stage, is not evaluating the merits or demerits of the amendments sought in the application. The present suit is at its initial stage where the pleadings are yet to be completed and looking into the fact that the Will in question mentions two properties, it would be in the interest of justice that the Plaintiff be permitted to raise claims with respect to all the properties that are the subject matter of the Will, in order to avoid multiplicity of proceedings.

6. Accordingly, application is allowed. The amended plaint along with additional documents accompanying thereto are taken on record.

7. Defendant is permitted to file amended written statement within a period of two weeks from today along with affidavit of admission/denial of documents in respect of the additional documents that have now been permitted to be taken on record. Replication be filed within two weeks thereafter.

8. List before the Joint Registrar for completion of pleadings and admission/denial of documents.

I.A. 9666/2019 (under Order 151 CPC for directions)

9. By way of this application, the Plaintiff seeks appropriate directions in relation to handing over of possession of the leased portion of the suit property i.e. first floor of the suit property, jointly to Plaintiff and the Defendant. The said portion of the suit property is presently under tenancy. The Plaintiff claims that the Defendant vide order dated 27th May, 2019, copy whereof has been placed on record, has terminated the tenancy and has intimated that the tenant would be vacating the first floor of the suit property by 31st July, 2019.

10. Learned counsel for the Plaintiff submits that property was earlier let out by the mother of the Plaintiff and this fact is not disputed. Accordingly, till the next date of hearing, whoever (Plaintiff or Defendant) receives the key of the said premises, the same shall be deposited with the Registry of this Court.

11. Any subsequent leasing of the suit premises shall be done jointly by the parties. The learned counsel for the Defendant further confirms that the rent for the month of May, 2019 has been received by the Defendant and has no objection to depositing the said amount with this Court in the name of Registrar General, Delhi High Court. Let the same be done within two weeks from today.

12. Accordingly application stands disposed of in the above terms.

13. List before the Joint Registrar on date already fixed i.e. 22nd August, 2019.

SANJEEV NARULA, J

JULY 22, 2019

Pallavi