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

+ **CS(OS) 503/2021**

MRS. SHOBHITA KATHPALIA Plaintiff

Through: Mr.Ashim Sood and Mr.Ekansh
Gupta, Advts.

versus

MR. VIRINDER KUMAR MEHTA & ORS. Defendants

Through: Mr.Mayank Aggarwal, Adv. for D-1.
Mr.Aman Mehta, Defendant no.3 in
person and POA of defendant no.2.
Mr.Manish Makhija and Ms.Simran
Mahija, Advts. for defendants no.4, 5
& 6.
Mr.Anshul Gupta, adv. for D-7.
Mr.Kuber Bajaj, Adv. for D-9.
Mr.Rahul Malhotra and Mr.Kaustubh
Punj, advts. for D-8.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
06.02.2024

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I.A. 10176/2022 (UNDER ORDER VI R 17 CPC)

1. By virtue of this application, the plaintiff has sought for incorporating the following prayer:

14. The following paragraphs 20A to 20M be inserted after the existing paragraph 20 of the Plaint:

20A. Subsequent to filing of the Suit, Defendant Nos. 1 to 6 have sought to propound an alleged Will dated June 29, 1993, of late



Mrs. Janki Mehta (the “*Alleged Will*”). The photocopy of the *Alleged Will* placed on record is three pages.

20B. The Plaintiff disputes the existence of the *Alleged Will* and submits that the *Alleged Will* is not genuine. The Plaintiff has never seen any Will of late Mrs. Janki Mehta or anyone else concerning the Suit Property.

20C. Therefore, the question of objecting to the *Alleged Will* has never before arisen. The Plaintiff does not recognize any of the signatures on the *Alleged Will*, including of the testatrix or any of the witnesses. The original *Alleged Will* has not been produced. The Defendants have only filed photocopies of the *Alleged Will* and the photocopies filed are different from each other. Without prejudice, at the very least this indicates that even if the *Alleged Will* does exist, it may have been tampered with and is defective and invalid.

20D. The burden of proof to prove the *Alleged Will* is squarely on the propounder thereof, since no reference has ever been made to it in the copies of the official records available to the Plaintiff and submitted with the *Plaint*, namely, the application for mutation made by the legal heirs of late Mrs. Janki Mehta to the New Delhi Municipal Council.

20E. The Plaintiff submits that, without prejudice, in any case, the *Alleged Will* stands abandoned by the conduct of the legal heirs of late Mrs. Janki Mehta, who have consciously chosen not to act on it and have clearly not adhered to its terms and directions.

20F. Also without prejudice, the *Alleged Will* is incapable of implementation since its contents amount to a failed bequest. It is submitted that the *Alleged Will* is drafted in such a way that it would be impossible for the legal heirs to divide the Suit Property in terms of the *Alleged Will*.

20G. Moreover, and without prejudice, late Mr. S.K. Mehta’s failure to construct a first floor on the front ground floor portion of the Suit Property, was a pre-requisite for the *Alleged Will* to be activated and upon his failure to do so immediately upon the demise of the testatrix, the *Alleged Will* stands defeated, and in any case late Mr. S.K. Mehta would not be entitled to the portion bequeathed to him under the *Alleged Will*.

20H. Further, and also without prejudice, even if the *Alleged Will* exists and is not a failed bequest, it is very clear from the terms of



the Alleged Will itself that the intention of the testatrix as discernible is to bequeath an equal, i.e., 1/4th share of the Suit Property to the Plaintiff's mother, late Mrs. Asha Loomba. This is clear from the following, among other factors:

- a. Under the Alleged Will, the common area of the Suit Property has been distributed equally to the legal heirs;*
- b. Under the Alleged Will, all the moveable property, including the household articles, linen, fixed deposit receipts, jewellery, shares and all other movable items were to be divided equally between the legal heirs;*
- c. Under the Alleged Will, the expenses for the construction of the Barsati, which was to devolve upon the Plaintiff's mother under the Alleged Will, was to be borne by late Mrs. Janki Mehta or her estate;*
- d. Under the Alleged Will, all the expenses, taxes and charges in respect of the Suit Property was to be borne by her legal heirs equally; and*
- e. Under the Alleged Will, it is further stated very clearly that if all the legal heirs decide to sell the Suit Property, they are required to divide the proceeds of such sale equally.*

Therefore, it is submitted that even according to the Alleged Will, the intention of late Mrs. Janki Mehta, the testatrix thereof, was to bequeath all her assets including the Suit Property in equal parts to her four children.

20I. Moreover and without prejudice, Defendant No. 1's reliance on the Alleged Will is an admission that late Mrs. Janki Mehta had bequeathed her movable properties in equal shares to her legal heirs, including late Mrs. Asha Loomba, who was the Plaintiff's mother.

20J. However, late Mrs. Asha Loomba was never given her share in movable properties by Defendant No. 1 who retained full control of them in conjunction with late Mr. S.K. Mehta and who seem to have illegally converted all such movable properties to their own use and benefit.

20K. Therefore, it is submitted that the Plaintiff is further entitled to 1/16th share in all the moveable properties of late Mrs. Janki Mehta and the Defendants are liable to render accounts therefor, and the Plaintiff is further entitled to any properties or equivalent



sums as may be determined as being due to her. Upon rendition of accounts being made and the sums due to the Plaintiff being ascertained, the Plaintiff undertakes to pay any court fees that will become due.

20L. The Plaintiff has no knowledge of what movable properties were left behind by late Mrs. Janki Mehta, and which are in the control of late Mr. S.K. Mehta and Defendant No. 1. Since they are her maternal uncles, they have always had control of the movable properties, and only they, and their heirs, have any knowledge of records of what movable properties form part of the estate of late Mrs. Janki Mehta.

20M. The late Mr. S. K. Mehta and the Defendant No. 1 have not permitted the Plaintiff to access the records relating to movable properties left behind by the late Mrs. Janki Mehta. The Plaintiff has a legal right to possession, occupy and take custody of any assets of the late Mrs. Janki Mehta presently in the custody of the Defendants.

15. The following paragraph 23A be inserted after the existing paragraph 23 of the Plaint:

23A. The Plaintiff also prays that a preliminary decree of rendition of accounts may be passed by this Hon'ble Court directing Defendant No. 1 and Defendant Nos. 4 to 6 to render accounts with respect to late Mrs. Janki Mehta's movable properties, including but not limited to an itemized list and valuation, and a full disclosure of how such properties have been treated or disposed of.

16. The following averment be added at the end of the existing paragraph

“The cause of action also arose when Defendant No.1 filed his written statement in the present case in which he filed a photocopy of an alleged will of late Mrs. Janki Mehta.”

17. The following rows be added at the end of the table at paragraph 29



MANDATORY INJUNCTION	INR 200	FIXED COURT FEE OF INR 20	PLAINTIFF HAS NO ACCESS TO THE ACCOUNTS THEREFORE THE FIXED COURT FEE IS BEING PAID BY THE PLAINTIFF WITH AN UNDERTAKING TO PAY BALANCE COURT FEE UPON TRUE AND CORRECT RENDITION OF ACCOUNTS
PARTITION OF MOVABLE PROPERTIES	INR 200	INR 20	INR 20
CANCELLATION OF THE ALLEGED WILL	INR 200	INR 200	INR 20

18. As a consequence of the above amendments, the Plaintiff seeks to insert the following prayers (ba), (bb), (bc) and (bd) after existing prayer (b):

(ba) Pass a preliminary decree of mandatory injunction restraining the Defendants from selling/alienating/mortgaging and/or creating any third-party interest in respect of all movable properties of the late Mrs. Janki Mehta.

(bb) Pass a preliminary decree directing the Defendants jointly and severally to render a complete and honest account of the manner in which the movable assets forming part of the estate of late Mrs. Janki Mehta have been dealt with since her death including all benefits derived therefrom.

(bc) Upon rendition of accounts pursuant to prayer (ba) to pass a final decree either for partition of such assets, or in the alternative,



where such assets have been disposed of, for the payment of such value of these assets in accordance with her proportionate share for such sum in favour of the Plaintiff and against the Defendants as may be found due and payable.

(bd) Direct the Defendants to produce the original copy of the Alleged Will and on production, the same may be cancelled or destroyed.

2. Learned counsel for the plaintiff submits that the amendments are necessitated on account of the Will set up by the defendants in their written statement. Learned counsel submits that the present suit was filed on the basis of the premises that late Smt. Janaki Devi Mehta died intestate.
3. However, in the written statement of the defendants, it transpired that allegedly a Will was executed by the late Smt. Janaki Devi Mehta. The plea of the plaintiff is that the Will, the original of which has not seen the light of the day, is forged and fabricated and not enforceable. Learned counsel submits that therefore the suit which is at the pleading stage itself may be allowed to be amended to avoid multiplicity of the litigation.
4. Learned counsel for defendant no.1 and Mr.Aman Mehta, defendant no.3/POA of defendant no.2 have opposed the application and submit that the plaintiff was well within the knowledge of the alleged Will and therefore she cannot be allowed to fill up the lacuna in her case.
5. Learned counsel for Defendant No. 3 who has appeared in person has stated that the present application is not at all maintainable. It has been submitted that the Will is of 1993 which is a registered Will and the plaintiff cannot claim ignorance about the Will. Learned counsel



has also submitted that the amendments which have been sought are beyond the purview of the law. It has further been submitted that the present application is also barred by law of limitation. Learned counsel also submits that if this application is allowed, it will cause prejudice.

6. Learned counsel for defendant no.4, 5 and 6 submits that an appropriate order may be passed.
7. Learned counsels appearing for defendants no.7, 8 and 9 have submitted that they have no objection if the application is allowed.
8. The amendment is provided under Order VI Rule 17 of CPC which reads as under-

“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 be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

9. It is also settled law that while considering whether an application for amendment should be allowed or disallowed, the Court should not go into the correctness or the falsity of the case in the amendment, nor should it record a finding on the merits of the amendment sought to be incorporated by way of amendment. The Hon’ble Supreme Court in the case **B.K Narayana Pillai v. Parameswaran Pillai** (2000) 1 SCC 712, *inter alia* held as under

The purpose and object of Order VI Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various



High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach.

10. I consider that the court at this stage is not required to go into the merits of the case. The contentions which have been taken by the learned counsel for defendants no.1 and defendant no.3/PAO of defendant no.2 are to be tested decided/determined during the course of the trial. The suit is at an early stage. I do not consider that any prejudice will be caused to the defendants.
11. Hence, the application is allowed.
12. The amended plaint be taken on record.

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13. Let the written statement to the amended plaint be filed within four weeks with a copy to the learned counsel for the plaintiff.
14. All the learned counsels submit that since it is a family matter involving the lawyer, the possibility may be explored to have the matter settled.
15. Let the matter be referred to the Delhi High Court Mediation and Conciliation Centre. Parties are directed to appear before the Organising Secretary on 14.02.2024 at 2.30 p.m.
16. List before Court on 03.04.2024 for before the Joint Registrar (Judicial) for completion of pleadings.

DINESH KUMAR SHARMA, J

FEBRUARY 6, 2024

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