



\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (OS) 1265/2014**

K.S MAHAJAN

..... Plaintiff

Through: Mr. Jagjit Singh and Mr. Vipin
Chaudhary, Advocates (M:
9711161241).

versus

SUNANDAN KUMAR MAHAJAN & ORS

..... Defendants

Through: Mr. Sunil Verma, Advocate for D-1
and 5 (M: 9899017004).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

11.04.2019

I.A. 15038/2016 (Under Order I Rule 10) and I.A. 15072/2016 (Under Order VI Rule 17)

1. The present suit was filed by Mr. K. S. Mahajan against his brother, Mr. Sunandan Kumar Mahajan and others for partition and permanent injunction in respect of Property No. 16/121-E, Anandpuri, Tank Road, Karol Bagh, New Delhi. The property belonged to Late Shri Bawa Ram Mahajan, the father of the Plaintiff. The suit was first listed on 2nd May, 2014, when status quo was directed to be maintained by the parties. Thereafter, written statement was filed by Defendant No. 1, who took the position that the property has already been sold to his wife Mrs. Kiran Mahajan. Accordingly, the Plaintiff filed a separate suit, being CS (OS) 733/2015, challenging the execution of the said sale deed. Vide order dated 25th March, 2015, a learned Single Judge of this Court passed the following order:-



“Present suit is a suit for declaration and permanent injunction. The prayer made in the present suit is that the sale deed dated 14.01.2014 alleged to have been executed by defendant No. 1 (Sunandan Kumar Mahajan) in favour of defendant No. 5 (Kiran Mahajan-his wife) be declared null and void. Learned counsel for the plaintiff submits that this fact came to be highlighted in the written statement which had been filed by defendant No. 1 in the earlier suit which had been filed by the plaintiff i.e. CS(OS) No.1265/2014. This has led to the filing of the present suit.

The proper course for the plaintiff would have been to amend the plaint in CS(OS) No. 1265/2014.

Learned counsel for the plaintiff seeks permission of this Court to withdraw the present suit with liberty granted to move an appropriate application seeking amendment in CS (OS) No. 1265/2014. Permission is granted.

Dismissed as withdrawn.”

2. Vide the above order, the Plaintiff was given liberty to seek amendment in the present suit. Hence, the present two applications seek the addition of Mrs. Kiran Mahajan and the Sub Registrar, Delhi as Defendant Nos. 5 and 6 as also amendment of the plaint.

3. Mr. Jagjit Singh, Advocate appearing for the Plaintiff submits that the factum of sale to the wife Mrs. Kiran Mahajan being a subsequent fact disclosed in the written statement, the amendment deserves to be allowed. On the other hand, Mr. Verma, Advocate appearing for the Defendant Nos. 1 and 5 submits that despite the fact that the written statement was filed in 2014, the application has been moved belatedly in 2016.

4. The application for amendment seeks to bring on record subsequent facts disclosed to the Plaintiff in the written statement of the Defendant



No.1. The suit being one for partition, in order for comprehensive adjudication to be undertaken by the Court, the subsequent sale and the documents executed thereof of the same property, of which partition is sought, would have to be considered and the relief sought by the Plaintiff for declaration would also be required to be adjudicated. The Plaintiff having availed of the remedy of filing a separate suit and having being directed and given the liberty to file the present amendment, has taken steps after the order dated 25th March, 2015. Thus, the application cannot be said to be belated. Application under Order 1 Rule 10 CPC is allowed. Mrs. Kiran Mahajan and the Sub Registrar, Delhi are added as Defendant Nos. 5 and 6. Application under Order VI, Rule 17 is also allowed leaving open the objections/contentions of the Defendant on the merits of the said amendments. The amended plaint with the new memo of parties be filed within two weeks. Amended written statement within thirty days thereafter along with affidavit of admission/denial. I.A.s are disposed of.

I.A. 8190/2014 (Stay)

5. The *status quo* order dated 2nd May, 2014 would now apply even qua Mrs. Kiran Mahajan and all the other parties including the Plaintiff and Defendant. The said order is made absolute during the pendency of the present suit. I.A. is disposed of.

CS(OS) 1265/2014

6. List before the Joint Registrar on 11th July, 2019.

7. List before Court on 23rd August, 2019.

PRATHIBA M. SINGH, J.

APRIL 11, 2019/MR