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

+ **TEST.CAS. 43/2006**

LT. COL.(RETD) GURVACHAN SINGH AND ANR

..... Petitioners

Through: Mr. Siddharth Yadav, Sr. Advocate
with Mr. Wasim Ashraj & Mr.
Narender, Advocates.

versus

STATE

..... Respondent

Through: Mr. Manish Kumar & Mr. Piyush
Kaushik, Advocates for R-4 to 6.

+ **CS(OS) 1194/2003**

JYOTI WAZIR & ORS.

..... Plaintiffs

Through: Mr. Siddharth Yadav, Sr. Advocate
with Mr. Wasim Ashraj & Mr.
Narender, Advocates.

versus

DEEPAK KHOSLA & ORS.

..... Defendants

Through: Mr. Raman Kapur, Sr. Advocate with
Mr. Manish Kumar, Mr. Piyush
Kaushik & Mr. Varun Kapur,
Advocates for D-1 to 3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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25.07.2022

I.A. 6790/2019 (U/S 151 of CPC) in CS(OS) 1194/2003

1. The present application has been filed under Section 151 of the Code of Civil Procedure, 1908 on behalf of the plaintiffs seeking to take on record the amended plaint filed in the year 2003.
2. The learned Single Judge of this Court *vide* Order dated 24th February,



2022 allowed the present application by observing that the Application i.e., I.A. No. 10975/2003 seeking amendments in the plaint was allowed on 20th November, 2003 and only a Formal Order was required to be made for taking the Amended Plaint on record. The right of the parties to raise all contentions, including that the amended plaint exceeds the **Order dated 20th November, 2003** and whether the issues were framed and the evidence led in respect of the amended plaint, shall be considered at the stage of final arguments.

3. An Appeal bearing No. FAO(OS) 27/2022 was preferred by the defendants herein against the Order dated 24th February, 2022 passed in I.A. No. 670/2019. The appeal was heard by the Division Bench of this Court on 19th April, 2022 and was partly allowed by observing that the question “whether the issues were framed on the basis of an amended plaint or that the issues **were struck on** the basis of the amended plaint as a whole and the parties had led their respective evidence on the basis of the **amended plaint**”, cannot be left to be decided at the stage of final arguments. The appeal was partly allowed and while amended plaint was taken on record, directions were given to decide these aspects before the final hearing, so that the parties are aware about the scope of the final hearing which would take place when the suit is finally heard on merits.

4. Learned Senior Counsel for the plaintiffs has vehemently argued that the issues were framed on the basis of amended plaint on 26th September, 2011 and Issue Nos. 2, 3 and 4 arise out of the amended plaint. The evidence has also been led *in extenso* on the amended plaint and the defendants have already led complete evidence in regard to the contentions raised in the amended plaint.



5. It is further argued that in view of the fact that the issues have been framed and evidence has already been led on the proposed amendments, no prejudice would be caused if the amended plaint is taken on record at this stage, when the matter is listed for final arguments.
6. This submission has been opposed on behalf of the defendants, who have asserted that neither was the amendment ever allowed nor were the defendants served with the amended plaint. Written Statement filed on behalf of the defendants is only in response to the original plaint. They have not got an opportunity to controvert the claims/assertions made in the amended plaint.
7. Learned Senior Counsel for the defendants have further argued in detail that the Issues No. 2, 3 and 4 are based on the contentions/documents that were produced by the defendants in the Written Statement and not on the basis of the amended plaint. It is submitted that now taking the amended plaint on record would cause serious prejudice and the same should not be permitted.
8. Submissions heard.
9. In order to understand the controversy in hand, it would be pertinent to refer to the history of this case.
10. Plaintiffs are the sisters of the defendants, who had filed the suit for Partition, Possession, Declaration and Injunction. The learned counsel on behalf of the defendant Nos. 1, 2 and 3 on appearance in the Court on 28th May, 2003 took an objection in regard to the maintainability of the Suit under Section 23 of the Hindu Succession Act, 1956. The matter was listed for arguments on the maintainability of the Suit.
11. Thereafter, the defendants moved an Application i.e., I.A. No.



9508/2005 under Order 7 Rule 11 of the Code of Civil Procedure, 1908 seeking dismissal of the suit on the same legal objection of maintainability of the suit. This Court considered the Application on 18th April, 2006 and observed that the contention of non-maintainability of the suit in view of the Section 23 of the Hindu Succession Act, 1956 shall be considered at the stage of final disposal since the claim of the plaintiffs was not confined only to succession.

12. Eventually, on 21st July, 2008, this Court observed that the claim of the plaintiffs was not only having the basis under Section 23 of the Hindu Succession Act, 1956 but the plaintiffs were also questioning the Wills executed by Late Shri K.G. Khosla and Late Mrs. Kamal Khosla, who were their parents, in which event it would be a case of intestate succession and also on Gift Deed executed by Late Shri R.N. Kholsa, coupled with the Declarations made by Late Shri K.G. Khosla and Shri J.G. Khosla. Having regard to the pleadings/contentions, summons of the suit were directed to be issued to the defendants confined to Prayer Nos. 3, 4 and 5, while the question of maintainability of Prayer Nos. 1 and 2 were kept to be considered separately. Written statement was directed to be filed by the defendant Nos. 1 to 3 and in the meanwhile, defendant Nos. 4 to 6 were directed to be served. The Application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 was withdrawn on behalf of the defendants on 09th September, 2008.

13. Thereafter, the plaintiff moved an Application bearing No. **I.A. 13834/2008** asserting that the objections in respect of Section 23 of the Hindu Succession Act, 1956 **have not become null and void** and a prayer was made that the summons, in respect of the Prayer Nos. 1 and 2, may be



issued to the defendants in order to avoid any complication in due course. The application was opposed by the defendants. Summons were directed to be issued to the defendants in respect of Prayer Nos. 1 and 2 of the plaint as well.

14. An Application **bearing No. I.A. 10975/2003** under **Order 6 Rule 17 read with Section 17 of the Code of Civil Procedure, 1908** was filed on behalf of the plaintiff seeking correction in the date of Deed of Partnership and also to seek amendments in the plaint in respect of their entitlements to suit property. While, the amendment in respect of correction in the deed of Partnership was allowed but the other amendments were specifically denied in view of the objections taken in regard to the maintainability of the suit under Section 23 of the Hindu Succession Act, 1956. *Vide* Order dated 20th November, 2003, the proposed amended plaint dated 19th November, 2003, only to the extent of correction of the Deed of Partnership and no other aspects in regard to the entitlement of the plaintiff in respect of the suit property was allowed. The Amended Plaint was thus, limited to rectification of Deed of Partnership and not to other aspects.

15. In so far as taking the amended plaint on record is concerned, the issue has already been decided by the Order of 24th February, 2022 when the amended plaint has been allowed to be taken on record and the Order upheld by the Division Bench in its Order dated 19th April, 2022. It is no longer open for either party to question the taking on record of the amended plaint. *Vide* Order dated 24th February, 2022 of the Division Bench in Appeal bearing No. FAO(OS) 27/2022, the only question which remains to be determined is whether the issues have been framed on the basis of amended plaint and whether the evidence recorded beyond the assertions made in the



original plaint, can be left to be considered at the stage of final arguments.

16. As detailed above, the question whether the issues have been framed on amended plaint or they need to be reframed on the basis of the amended plaint and whether the evidence led by both the parties covers the issues raised in amended plaint, can be determined only after the Written Statement, if any, has been filed by the defendants to the amended plaint.

17. Accordingly, the defendants are directed to file their Written Statements to the amended plaint within three weeks and the plaintiffs may file a replication thereafter within one week.

18. List on 08th September, 2022.

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List on 08th September, 2022.

NEENA BANSAL KRISHNA, J

JULY 25, 2022

S.Sharma