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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CS(OS) 1161/2015**

**RAKESH GUPTA & ANR** .....Plaintiffs  
Through: Ms.Diksha Goswami, Adv. for  
P-1.  
Ms.Vishakha Gupta,  
Mr.Shivam Kr. Raheja, Advs.  
for P-2a to 2c.

versus

**SUSHIL KUMAR GUPTA & ORS** .....Defendants  
Through: Mr.Keshav Sehgal, Mr.Shivam  
Gaur, Mr.Kshitij Joshi,  
Mr.Aryan Kumar, Advs. for D-  
1 & 2.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

% **12.09.2024**

**I.A. 24325/2023 & I.A. 24326/2023**

1. The I.A.24326/2023 has been filed by the legal heir of the plaintiff no.2, that is, the plaintiff no.2(a), under Order VII Rule 14(3) of the Code of Civil Procedure, 1908, praying for the leave of this Court to produce and bring on record additional documents.
2. The additional documents sought to be produced on record are stated to be the purported complaint filed by the deceased defendant no.4 before the Defence Colony Police Station on 19.04.2016, and a compact disc containing the alleged conversation between the plaintiff no.2(a)/applicant and the defendant no.4 on 18.04.2016, along with



the transcript of the same.

3. The I.A.24325/2023 has been filed by the plaintiff no.2(a) seeking leave of this Court to file her evidence by way of affidavit by also relying on the above two documents in the same.

4. The present suit was filed by the plaintiffs seeking a declaration that in view of the settlement made in the Will dated 31.05.2010 and Codicil dated 23.03.2011 of the defendant no.4, late Smt.Angoori Devi Gupta, and in view of the irrevocable license created by her in favour of the plaintiffs with respect to the ground floor, first floor, and second floor of the property bearing No.4, Defence Colony Market, New Delhi, the plaintiffs are the absolute owners in possession of the same. The plaintiffs further challenge the Gift Deed dated 21.04.2015 executed by late Smt.Angoori Devi Gupta in favour of the defendant nos.1 and 2 for the said property on the above account.

5. The plaintiff no.2 unfortunately passed away on 23.11.2017. Thereafter, on an application filed by his legal heirs, being I.A.382/2018, the legal heirs were substituted *vide* Order dated 30.01.2018.

6. Unfortunately, the defendant no.4 also passed away on 20.08.2018 and thereafter, on an application, being I.A.15129/2018, her legal heirs were brought on record *vide* Order dated 11.01.2023.

7. The PW-1 filed his evidence by way of affidavit and his examination was concluded on 04.05.2023. PW2 to PW4 were also examined and discharged on 23.08.2023.

8. It is at this stage that the plaintiff no.2 has filed the present set of applications, on or about 02.12.2023.



9. The learned counsel for the plaintiff no.2(a)/applicant submits that by producing these documents, the plaintiff is not, in any manner, seeking to change the nature of the suit. In the suit it has already been pleaded that there was an oral settlement which was then recorded in the form of the Will and Codicil of the defendant no.4, which is now sought to be proved by way of the documents, including the video recording now sought to be placed on record. She further submits that these documents could not be brought on record earlier as the process of substitution of the legal heirs of the defendant no.4 had commenced, which culminated on 11.01.2023, when the application for substitution of the legal heirs of the defendant no.4 was allowed. Thereafter, PW-1, and PW-2 to PW-4 were being examined. It was only at the stage of preparing the evidence by way of affidavit of the legal heirs of the plaintiff no.2 that these documents were shown to the counsel, who had been newly engaged, and these documents were found relevant to be produced before this Court. Placing reliance on the Judgment dated 17.05.2022 of the Supreme Court in Civil Appeal No.4096/2022, ***Levaku Pedda Reddamma & Ors. v. Gottumukkala Venkata Subbamma &Anr.***; and of this Court in ***Sh.Swadesh Sharma v. Sh.Vikas Sharma & Ors.***, Neutral Citation 2015:DHC:1042; and ***M/s Intelli Care v. M/s Roots Multiclean Ltd.***, Neutral Citation 2023:DHC:5879, she submits that if the documents are relevant, a mere delay in the filing of the same cannot be a ground for not taking the same on record. She submits that as the plaintiffs are yet to be examined, the defendants would get sufficient opportunity to place their case, by cross-examining the plaintiffs' witnesses or in



their own evidence.

10. On the other hand, the learned counsel for the defendant nos.1 and 2 submits that there is a considerable delay in filing of the applications seeking to produce the additional documents on record. He submits that even as per the case of the plaintiff no.2(a), she was impleaded by an order dated 30.01.2018. The present applications were filed more than five years thereafter, in the year 2023. The only ground urged for not filing the same earlier is change of counsel. Placing reliance on the Judgment of this Court in *Preeti Arora v. Aniket Subash Kore*, ILR (2014) I Delhi 758; and of the Bombay High Court in *Navinchandra Khimchand Shah and Anr. v. Putco Pvt. Ltd. & Ors.* 2019 SCC OnLine Bom 1684, he submits that the mere change of counsel cannot be a ground for allowing a party to belatedly file documents on record.

11. I have considered the submissions made by the learned counsels for the parties.

12. From the above narration of facts, it is evident that the plaintiff no.2(a) was not the original plaintiff in the suit. She was impleaded on the unfortunate demise of the plaintiff no.2, only *vide* Order dated 30.01.2018, as a legal heir, being the wife of the plaintiff no.2. Though it cannot be denied that thereafter there has been a considerable delay in filing of the additional documents on record, one of the documents which is sought to be placed on record is a purported complaint filed by the defendant no.4 with the police. The other document is stated to be the alleged video recording of the conversation that took place between the defendant no.4 and the



plaintiff no.2(a)/applicant. These documents are stated to have come into being after the filing of the suit.

13. It has been observed by the Supreme Court in *Levaku Pedda Reddamma & Ors* (supra) that the rules of procedure are handmaid of justice and, therefore, even if there is some delay, the documents should be allowed to be produced on record, subject to imposition of costs. The defendants always have an opportunity to have their say against the said documents in the form of cross-examining the plaintiff no.2(a) and also in leading their own evidence. At this stage, the Court is not to judge the relevance or admissibility of the documents.

14. Though it is true that the mere change of counsel cannot be a ground to allow a party to belatedly introduce new documents, however, in view of the peculiar facts of the present case, in my opinion, the said objection cannot sustain.

15. Accordingly, the applications are allowed. The additional documents are taken on record. The plaintiff no.2(a) is allowed to file her affidavit referring to the said documents therein. The plaintiff no.2(a) shall, however, pay costs of Rs.15,000/- to the defendant nos.1 and 2 jointly for the delay caused.

16. It is again made clear that this Court has not expressed any opinion on the relevance or admissibility of the documents or mode of proof of the documents now permitted to be brought on record.

17. The applications are disposed of in the above terms.

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18. The learned counsels for the parties shall co-ordinate with the learned Local Commissioner appointed by this Court for recording of



the evidence, and give assistance to the learned Local Commissioner to expedite the said process.

19. List before the learned Joint Registrar (Judicial) on 20<sup>th</sup> December, 2024.

**NAVIN CHAWLA, J**

**SEPTEMBER 12, 2024/Arya/SJ**

*Click here to check corrigendum, if any*