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

+ **CS(OS) 528/2018**

SMT. ABHA GUPTA

..... Plaintiff

Through: Mr. Viney Sharma, Advocate.

versus

SHRI RAVINDRA KUMAR GUPTA & ORS. Defendants

Through: Mr. Vikas Gupta, Advocate for D-1.
Mr. Vikas Kr. Bharti, Advocate for
D-2, 3, 5 & 6.
Mr. V.K. Gupta, Advocate for D-4
with D-4 in person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

28.02.2024

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I.A. 415/2020 (u/O VI Rule 17 r/w Section 151 of CPC, 1908)

1. By way of present application, the applicant/plaintiff seeks amendment of the Plaint.
2. It is submitted in the application that the present Suit for Partition, Possession, Distribution, Cancellation and Recovery of Mesne Profits has been filed on behalf of the applicant/plaintiff against the defendants.
3. It is asserted that in Paragraph 8 & 13 of the Suit, it has been mentioned about the illegal retention of the FDRs which were in the name of father of the partis with other defendants jointly.
4. It is also submitted that the applicant/plaintiff, at the time of filing of the present Suit, was not aware of the exact details of the FDRs. However,



now, she is able to get the details of FDRs which she wants to incorporate at the end of Paragraph-13 of the Plaint.

5. Learned counsel on behalf of the defendant No. 1, who is the only contesting defendant, submits that it is evident from the details of FDRs as furnished, that they all were in the joint name of different defendants with the father and were on the basis of “*either or*”. Therefore, after the demise of the father, the amount of the FDRs became the exclusive property of the surviving person. These *prima facie* do not qualify to assets of the deceased father and, therefore, the proposed amendment is neither necessary nor appropriate for adjudication of the issues raised in the present Suit.

6. **Submissions heard.**

7. It has been rightly argued that though the amounts may have been in the joint name, whether, in fact, the investments were from the funds of the father is a moot question which can be tried only by way of evidence.

8. The averments of the applicant/plaintiff herself that the father never had any resources even to meet his medical conditions, can be taken up at the appropriate stage.

9. Without going into the merits of the proposed amendment which is a subject matter of trial, the present application is allowed without prejudice to the rights and contentions of the non-applicants/defendants to raise their contentions at the appropriate stage.

10. Accordingly, the present application is disposed of.

11. Amended Plaint be filed within 15 days.

12. The non-applicants/defendants are at liberty to file the amended Written Statement to the extent of amendments allowed by way of present application.



I.A. 353/2020 (u/O VI Rule 17 r/w Section 151 of CPC, 1908)

13. By way of present application, the applicant/defendant No. 3 seeks to amend the Written Statement.

14. The perusal of the record shows that the Written Statement of the applicant/defendant No. 3 along with his Reply to the Application under Order XXXIX Rules 1 and 2 of CPC, 1908 have been returned under objection, consequently, they are not on record.

15. Learned counsel for the applicant/defendant No. 3 is directed to pursue with the Registry to get the objection removed and place the same on record before the next date of hearing.

16. List before the Joint Registrar for completion of pleadings on 03.05.2024.

I.A. 13849/2021 (u/O VI Rule 17 r/w Section 151 of CPC, 1908)

17. By way of present application, the applicant/defendant No. 4 seeks to amend the Written Statement.

18. It is submitted that at the time of filing of Written Statement, he was not aware of the Will dated 22.06.2006 which was deposed for the first time in the Written Statement of the defendant No. 1. Consequently, the applicant/defendant No. 4 wishes to amend his Written Statement to add Paragraph-14 A to state the facts and his stand about the Will dated 22.06.2006.

19. The present application has been contested on behalf of the non-applicant/defendant No. 1 by submitting that in the proposed Will dated 22.06.2006, an ambiguous stand has been taken by the applicant/defendant No. 4 and it is not clear whether he is admitting or challenge the execution of the Will dated 22.06.2006.



20. It is further contended that the present application has been filed after a delay of three years and, therefore, the present application is liable to be rejected.

21. **Submissions heard.**

22. The applicant/defendant No. 4 seeks to amend his Written Statement by way of proposed amendment by adding Paragraph-14A which essentially emanates from the contents of the Written Statement of the non-applicant/defendant No. 1.

23. Considering the nature of the proposed amendment, the application is allowed to the extent stated above.

24. The amended Written Statement be filed within 13 days.

25. Accordingly, the present application is disposed of.

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26. List before the Joint Registrar for completion of pleadings on 01.05.2024.

NEENA BANSAL KRISHNA, J

FEBRUARY 28, 2024

S.Sharma