

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

% Reserved on: 22nd September, 2010

Decided on: 12th November, 2010

1. FAO (OS) No. 207/2010 & CM No. 5660/2010 (Stay)

1. Shri Pramod Khanna

2. Smt. Kiran B. Khanna

Both R/o D-9, Hauz Khas,
New Delhi-110 016.

..... Appellants

Through: Mr. Sandeep Aggarwal and Mr. K.A.
Singh, Advocates.

versus

1. Shri Subodh Khanna

2. Smt. Ruby Khanna

Both R/o S-438, Ground Floor,
Greater Kailash-II,
New Delhi-110 048.

..... Respondents

Through: Mr. G.D. Chopra, Advocate.

AND

2. FAO (OS) No. 340/2010 & CM No. 9290/2010

1. Shri Subodh Khanna,
S/o Shri C.P. Khanna

2. Smt. Ruby Khanna,
W/o Shri Subodh Khanna

Both Resident of:
W-105, Greater Kailash-II,
New Delhi-110 048

..... Appellants
Through: Mr. G.D. Chopra, Advocate.

versus

1. Shri Promod Khanna
S/o Shri C.P. Khanna
2. Smt. Kiran B. Khanna
W/o Shri Promod Khanna,

Both Residents of:
D-9, Hauz Khas,
New Delhi-110 016.

..... Respondents
Through: Mr. Sandeep Aggarwal and Mr. K.A.
Singh, Advocates.

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. These Appeals are directed against the Impugned Order dated 10th February, 2010 passed in IA No. 9765/2008 in CS (OS) No. 2203/2006 whereby this Application under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code for amendment of the Plaint was partly allowed.

2. The Appellants/Plaintiffs Shri Pramod Khanna and his wife Smt. Kiran B. Khanna filed a Civil Suit against the Respondents/Defendants Sh. Subodh Khanna and his wife Smt. Ruby Khanna for declaration, permanent and mandatory injunction in respect of property No. W-105, Greater Kailash-II, New Delhi (hereinafter referred to as the 'suit property'). The Appellant No. 1 and the Respondent No. 1 are brothers and since there were disputes as regards the family owned properties in Delhi and NCR a family settlement was arrived at with the help of mediators. As per the Complaint the Respondents were to give certain sum of money to the Appellants in addition to their share of the properties, however, the entire amount was not given and thus, the Respondents failed to complete their obligation under the purported family settlement. On the Respondents seeking a mutation of the suit property the Appellants objected. As per the Respondents the negotiations came to an end on 24th March, 2006 in terms of an oral settlement which was subsequently reduced into a written family settlement on 4th April, 2006. The Appellants allege that the original copy of the settlement which was with the conciliators, who in connivance with the Respondents have changed the MOU whereas as per the Respondents the settlement was prepared by the legal advisors of the Appellants and as a memorandum of family settlement does not require registration, the same was not got registered.

3. By way of the amendment Application the Appellants sought to plead that the parties had signed certain undated letters and documents as the same were said to be required for transfer of the property subsequently in their names and this was done to avoid unnecessary harassment at the hands of either party for no objection certificates etc. The signatures of parties were also taken on the Memorandum of Understanding (MOU) with an understanding that the same related to joint properties of the parties and the Respondents were to pay ₹7.51 crores to the Appellants as per the MOU. After the signing of the MOU, the parties were required to sign on two sets of non-judicial stamp papers. An MOU was signed by the Appellant No. 1 and his son, however, subsequently when the Appellant No. 2 went to sign the same, she realized that the same was not the original MOU and hence did not sign the same. It is for this reason the Application for amendment was necessitated.

4. Learned counsel for the Appellants states that the amendments sought by the Appellants were just, fair and essential for a just decision of the case. The Appellants were not aware of the complete facts and they derived the knowledge of a forged MOU being prepared by the Respondents in connivance with the conciliators only from the Written Statement, so these facts were set out in the Replication and thus the Application seeking amendment of the plaint was filed. Reliance is placed on *Punjab National Bank vs. Indian Bank and another, 2003 (6)*

SCC 79, Rajesh Kumar Aggarwal and others vs. K.K. Modi and others, 2006 (4) SCC 385 and North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (D) by Lrs., JT 2008 (4) SC 587.

5. As per the Respondents the Application is clearly a delaying tactic and by way of amendment the Appellants seek to withdraw the admissions already made in the Plaint and the Replication and are now setting up an entirely new case based on new facts. According to the Respondents the Appellants are now challenging the MOU which they signed and have acted upon, as the value of the suit property has increased tremendously. In fact, the Appellants acknowledge and admit the family settlement in the Registered GPA dated 23rd May, 2006. Thus, according to the Respondents it is the Appellants who have prepared a forged and fabricated document and have deliberately filed a photocopy thereof and are desisting to file the original.

6. Learned counsel for the Respondents does not seriously contest the amendments already allowed though he has filed an Appeal being FAO (OS) No. 34/2010 against the Impugned Order. The main contention of the Respondents is that the amendments should not be permitted to the extent the same seek to withdraw admissions already made. According to the learned counsel the amendments sought besides contradicting the case of the Appellant, also proves the Respondent's case about codicils being correct. Great reliance is placed upon the Replication filed by the Appellant wherein it is specifically

admitted that the codicils were not part of the family settlement and they were kept separately so that once the payments are made the same would be destroyed. The relevant portion of the Replication relied upon by the learned counsel for the Respondents reads as under:

- “3. That the contents of para 3, as stated, are wholly incorrect and are denied. It is denied that the plaintiffs have suppressed any fact from this Hon’ble Court, as alleged or at all. The *defendants have not produced before this Hon’ble Court the genuine and complete family settlement*. It is submitted that due to certain disputes between the two brothers i.e. plaintiff no. 1 and defendant no. 1, it was decided that in order to avoid family litigation, the matter be resolved through mediation. The defendant suggested mediation by Mr. Puran Suri and Mr. Prem Nath Chopra of M/s Daily Milap Pvt. Ltd. Since Mr. Suri and Mr. Chopra were known to both the defendants and the plaintiffs and were well known in the business circle of Delhi, the plaintiffs agreed to the suggestion of the defendant no. 1. Accordingly, the matter was referred for mediation to the said mediators.

Before the mediations, it was decided that the division would be only of the joint properties and not the property standing in the personal name of the parties. It was further decided that the properties would be divided on equal basis and accordingly, to equate the shares of the two groups, a value was fixed to the properties. Since the properties coming to the share to the plaintiff’s group was valued less, in order to equate the shares, the defendant group was required to make a payment of 7.51 crores to the plaintiffs. *These payments were duly mentioned in two codicils i.e. Rs. 6.01 crores and Rs. 1.50 crores respectively, which were signed between the parties and were forming part of the family settlement. The reason that the family settlement does not have a mention*

of the payment amount/codicils is only because of the reason that it was decided between the parties that once the payments are made by the defendants to the plaintiffs, the codicils shall be destroyed. However, to the utter surprise of the plaintiffs, the defendants in collusion with the mediators only made part payments to the plaintiffs and have stated that there were no codicils. The defendants had paid a sum of Rs. 55 lacs to the plaintiffs by cheque bearing no. 334660 dated 25.6.2006 drawn on ICICI Bank, Connaught Place New Delhi 110001, Rs. 17 lacs cheque bearing no. 347677 dated 31.5.2006 drawn on Citi Bank New Delhi and Rs. 13.5 lacs cheque bearing no. 206050 dated 31.5.2006 drawn on Citi Bank New Delhi. Whereas, the balance amount of Rs. 6.96 crores is still required to be paid by the defendants. Further, the plaintiffs are also shocked that the defendants in collusion with the mediators have included the personal properties of the plaintiffs and have shown them as joint properties. It is submitted that the properties before the mediators were only joint properties and they were nine (9) in number and not thirteen (13) as shown by the defendants. The four (4) properties being Property bearing no. B-344A, Sushant Lok-I, Property bearing no. 102-B, 1st Floor, Bahadurshah Zafar Marg, New Delhi, Property bearing no. LG-24, Faridabad and Flat No. 204-A, 2nd Floor, Bahadurshah Zafar Marg, New Delhi are all personal properties of the plaintiffs and did not found part of the mediation proceedings."

7. Respondents contend that it is the case of the Appellants that the MOU did not have any mention of the codicils, however, now on record a photocopy of the MOU relied upon by the Appellants has been placed which clearly mentions about the codicils. Thus, this clearly demonstrates that the photocopy of the MOU filed by the Appellants is

a forged/fabricated document. Reliance is placed on *Sidharth Sareen and Anr. v. Hira Realtors Private Ltd. and Ors., 2010 (168) DLT 621*.

8. We have heard learned counsels for the parties. The Appellants sought amendment in paragraphs 9, 10, 11, 17 and the prayer clause of the Plaint. In respect of paragraph 9 and 11 the Appellants sought deletion of the original paragraphs and incorporation of additional paragraphs 9, 9(a), 11 and 11(a). As regards paragraph 10 the Appellants sought to incorporate additional paragraphs 10(a) to 10 (h) and also to amend paragraph 17 and the prayer clause by additions. By the Impugned Order the learned Single Judge did not permit the deletion of paragraph 9 and 11 however, permitted incorporation of additional averments made in paragraph 9, 9 (a), 11 and 11 (a) of the proposed amended plaint. The incorporation of additional paragraphs 10 (a) to 10(h) to the original para 10 was also permitted. The amendments sought by way of additions to paragraph 17 and the prayer clause, were declined by the learned Single Judge.

9. At this stage it would be relevant to reproduce the amendments in the Plaint sought by the Appellant:

Para 9 and 11 are sought to be deleted and new paras 9, 9A, 11 and 11A are sought to be incorporated instead of the original paras as under:-

Original Para 9

That after a lot of deliberations and discussions a purported family settlement and other documents etc.

were prepared by the said Conciliators/Mediators and the parties were directed to sign the same along with their children. The said Conciliators/Mediators also directed the parties to give certain documents such as Relinquishment Deeds, Affidavits etc. in respect of the division made by the Conciliators/ Mediators in the said purported Family Settlement.

Proposed amendments

Para 9

That after a lot of deliberations and discussions it was agreed between the parties that all the nine joint properties as stated above should be equally divided amongst the plaintiff No.1 and defendant No.1. The defendant No.1 expressed his interest in certain properties which were of a much higher value than the balance properties that could be taken by the plaintiff No.1. To have an equitable division of properties the parties agreed to evaluate all the joint properties and then to add an appropriate amount of money to be paid by the party taking more valuable properties to the other. In accordance with evaluation of the properties a price differential of Rs.15.02 crores was assessed between the two sets of properties. As a result of this it was agreed that the defendant No.1 would take the high value properties including the entire W-105, Greater Kailash Part II, New Delhi (1000 sq. yards plot area) and as an equalizer would pay a sum of Rs.7.51 crores to the plaintiff No.1. Based on this agreement between the parties, a Memorandum of Family Settlement was prepared and signed by both the parties. The said Memorandum of Family Settlement contained Schedule I which was the description of nine joint properties which were the subject matter of the family settlement. In addition to this Schedule II and Schedule III listed the three properties being taken by the plaintiff No.1 and six properties being taken by defendant No.1 respectively out of the aforesaid nine joint properties. The said Memorandum of Family Settlement also contained as Schedule IV a chart wherein the value of all the nine joint properties were mentioned and the price difference and the amount payable by the defendant No.1 to the plaintiff No.1 was specified. Since the defendant No.1 was not

clear and sure at that point of time about the manner and mode of paying Rs.7.51 crores to the plaintiff No.1, the aforesaid Memorandum of Family Settlement also referred to two codicils which were to form part of the said settlement. In fact, these two codicils were also prepared and signed between the plaintiff No.1 and the defendant No.1 at that point of time. Under One codicil a sum of Rs.1,50,00,000/- was agreed to be paid by the defendant No.1 to the plaintiff No.1 and under the other codicil the defendant No.1 agreed to pay a sum of Rs.6,01,00,000/- to the plaintiff No.1 as a precondition to the memorandum of family settlement. These two codicils formed part of the Memorandum of Family Settlement signed by both the parties.

Para 9A

The Mediators prepared the property transfer documents and certain other documents such as, undated letters addressed to the Assessors and Collector MCD etc. The plaintiffs signed these undated letters and documents. The plaintiffs also signed undated possession letters in respect of properties including property bearing No. W-105 Greater Kailash-II (1000 sq yards plot area), New Delhi. The plaintiffs also signed undated affidavits containing certain blanks, without dates and photographs. They also signed Special Power of Attorney, which were undated and without photographs. The plaintiffs faintly recollect affixing their signatures on certain other documents also including certain undated and un-numbered pages including blank papers and blank non-judicial stamp papers. All these documents were undated and without any photographs, ID and PAN details of the parties. The defendants also signed similar undated documents including General Power of Attorney, Special Power of Attorney, Affidavits, Relinquishment Deeds, Indemnity Bonds, Conveyance Deeds, possession letters etc. with blanks and without photographs for joint properties taken by the plaintiffs as per the agreed Family Settlement. All these documents were signed in the office of the mediators and were kept by the mediators in their exclusive power and possession.

Original para 11

That though the defendant no.1 did pay part of the said amount as directed by the conciliators, he refused to pay the remaining amount to the plaintiff no.1, thus, failing to complete his part of the obligation under the said family settlement.

Proposed amendments to the para

Para 11

That pursuant to the terms agreed between the parties and reduced in writing in the Actual Memorandum of Family Settlement, the defendants were liable to pay a sum of Rs.7.51 crores (seven crores fifty one lakhs) to the plaintiffs. In order to secure the payment of the plaintiff, the defendants had also deposited a security of Rs.7.51 crores with the mediators, in terms of the said Actual Memorandum of Family Settlement. However, the defendants expressed their inability to pay the said amount and requested the plaintiffs to allow them to sell/dispose off the joint properties, which had gone to their share, so that they can arrange further money i.e. Rs.7.51 crores to be paid to the plaintiffs. The defendant No.1 also assured the plaintiff no.1 that he will give the full sale consideration of the joint properties to the plaintiffs after selling them till he had paid the full equalizing amount of Rs.7.51. crores to the plaintiffs as per the agreed family settlement.

To further reassure the plaintiff no.1, the defendant no.1 gave the following three post dated cheques in favour of plaintiff no.1:

Cheque No.	Dated	Amount	Bank
334660	25.05.06	25,00,000	ICICI Bank
347677	31.05.06	17,00,000	ICICI Bank
206050	31.05.06	13,50,000	CITI Bank
	Total	55,50,000	

After giving these cheques amounting to Rs. 55,50,000/- (Fifty five lakh fifty thousand) to the plaintiff No. 1 the defendant No. 1 took back from the mediators security of equal value.

PARA 11A

That after receiving the above three cheques amounting to Rs. 55,50,000, the plaintiffs with a view to settle the disputes and have harmony in the family, agreed to the request of the defendant No. 1 and allowed him to dispose off the joint family properties coming to the share of the defendants. Accordingly, the defendants sold the following properties:

Property details	Area sq. yards	Value (as per Schedule IV) Rs. (in crores)
Palam Vihar G-172, Gurgaon, Haryana	1000 sq. yds	2.25
B-345A, Sushant Lok, Phase I, Gurgaon, Haryana	300 sq. yds	1.20
Flat 100 G, Lower Ground Floor, Milap Niketan, 8A, B.S. Zafar Marg, New Delhi-2	695 sq. ft.	0.36
	Total	3.81 crores

Though, the defendants were able to sell the aforesaid properties whose agreed value as per Schedule IV of Actual Memorandum of Family settlement was Rs. 3.81 crores, the defendants paid only a sum of Rs. 55,50,000/- to the plaintiffs as per details of the cheques given above. Thus, the defendants paid a sum of Rs. 55,50,000/- out of Rs. 7.51 crores payable by defendants to the plaintiffs, leaving a balance of Rs. 6,95,50,000/- (sixty crores ninety five lakhs fifty thousand). In spite of repeated requests and reminders, the defendants failed to pay the remaining part of the amount of Rs. 6,95,50,000/- to the plaintiffs.

Additional paragraphs 10A to 10H are sought to be incorporated after the original para 10, which are reproduced as under:-

Original Para 10

That since the share of the defendant No. 1 was considered to be much heavier because of his selection of the joint properties, the said Conciliators also directed defendant No. 1 to make certain payments to the plaintiffs, so as to make the share of joint properties equal.

Proposed paras 10A to 10H

Para 10 A

That on the request of the mediators, the defendants agreed to keep in trust, a security of Rs. 7.50 crores, (seven crores and fifty one lakhs), for fulfillment of their obligation to pay the equalizing amount of Rs. 7.51 crores to the plaintiffs, as per the Actual Memorandum of family settlement and codicils.

Para 10 B

It was agreed that as and when payment will be made by the defendants to the plaintiffs, the security kept with the mediators for the corresponding amount will be returned back to the defendants by the mediators.

Para 10 C

Since the draft of Memorandum of family settlement signed earlier by the parties was lying in the computer of the mediators, the mediators said that they will print its two sets on non judicial stamp papers so that both the parties may sign them and get them registered after the completion of the family settlement and payment of Rs. 7.51 crores by defendants to plaintiffs as per agreed family settlement.

Para 10 D

That subsequently, the mediators told the plaintiff No.1 that they had printed two sets of the memorandum of family settlement on Rs. 100/- non judicial stamp papers. The mediators told the plaintiffs to sign this purported memorandum of family settlement printed by them on non judicial stamp papers. This was also not having photographs and no ID and PAN details had been written on them. The photographs, ID, PAN and other details were to be filled on these documents at the time of registration of these documents after the family settlement was completed and the equalizer amount of Rs. 7.51 crores was paid by defendants to plaintiffs as per agreed family settlement. When the plaintiff No.1 wanted to read it before signing, the mediators told him that this memorandum of family settlement printed by them on non judicial stamp papers was the same as the memorandum of family settlement signed earlier by the parties. The mediators also told the plaintiff No.1 that he should have faith in the mediators and sign these documents without having any doubts in this regard. In good faith and trust the plaintiff No.1 and his son signed this purported Memorandum of Family Settlement which as per the mediators was identical to the Memorandum of Family Settlement signed earlier by the parties.

Para 10 E

Later on when this purported memorandum of family settlement printed by the mediators on non judicial stamp papers was given to plaintiff No.2 for signing, she noticed that this purported Memorandum of family settlement was not same as the Actual memorandum of family settlement signed earlier by the parties. In this purported memorandum of family settlement the schedule I was having 13 properties as joint properties instead of nine joint properties in Schedule I of the 'Actual Memorandum of Family Settlement.' Also Schedule II was having seven joint properties instead of three joint properties in schedule II of the Actual memorandum of Family Settlement. The four additional properties added in these schedules of the purported memorandum of family settlement were not joint properties and were the individually owned properties of the plaintiffs and their family members. Even the names of Angela Khanna, Payal Arora and Cherry Khanna were

added which were not there in the Actual Memorandum of Family Settlement. Also Schedule IV of the Actual Memorandum of Family Settlement which referred to the valuation of properties was missing and there was no mention of codicils and payment of equalizer amount of Rs. 7.51 crores payable by defendants to the plaintiffs. Besides these, there were also some other changes in certain other paragraphs and schedules. The plaintiffs were shocked to see the above discrepancies in the purported Memorandum of Family Settlement. The plaintiff No. 2 categorically refused to sign this purported Memorandum of Family Settlement unless the entire equalizer amount of Rs.7.51 crores was paid by the defendants to the plaintiffs.

Para 10 F

The mediators immediately took away the purported Memorandum of Family Settlement from the hands of plaintiff No.2 on the pretext of looking into the problem. The mediators then told the plaintiff that there seems to have been a mistake and they will get the necessary pages changed.

Para 10 G

In spite of repeated requests and reminders by plaintiffs to mediators, the mediators never brought the corrected Memorandum of Family Settlement for signatures of the plaintiff No. 2 and therefore, the plaintiff No.2 never signed the purported Memorandum of Family Settlement and was not a party to the purported Memorandum of Family Settlement. Thus, the purported deed of family settlement, in any case, is not a complete document as the same has not been signed by all the parties and has no meaning in law.

Para 10 H

On the other hand all the members named in the Actual Memorandum of Family Settlement i.e., the Plaintiffs and defendants and their sons have signed the Actual Memorandum of Family Settlement. The purported Memorandum of Family Settlement has not been signed by the parties added later on i.e. Angela Khanna, Payal Arora and Cherry Khanna. Hence, if at all, any document which is conclusive in nature, it is the Actual

Memorandum of family settlement signed by all the parties, which is legal and binding between the parties.

Para 17 and Clause (b) and (c) of the prayer clause are sought to be amended and they are reproduced as under:-

Original Para 17

That because of the above reasons the plaintiffs are left with no other alternate and efficacious remedy, but to approach this court by way of present suit.

Proposed Amendments

That because of the above reasons, the plaintiffs are left with no other alternate and efficacious remedy, but to approach this Hon'ble Court by way of present suit, as the defendants are illegally and fraudulently trying to taking over the property (half share in W-105, Greater Kailash II, New Delhi) of the plaintiff by forcing their entry on the basis of a purported memorandum of family settlement dated 4.4.2006 printed on non judicial stamp papers, possession letters dated 4.4.2006, letters to MCD for mutation dated 4.7.2006, purported affidavits of the plaintiffs dated 29.5.2006, the power of attorney and Special Power of Attorneys dated 29.5.2006. It is submitted that the purported memorandum of family settlement printed on non judicial stamp papers is an incomplete document, as the same is not signed by all the parties and has no meaning in law. Otherwise also, all the aforesaid documents, including the purported memorandum of family settlement have been obtained by the defendants from the plaintiffs under misrepresentation in a fraudulent manner by conniving with the mediator. Hence, the said documents are forged, fabricated, manipulated, interpolated and are not binding on the plaintiffs and are required to be declared illegal, null and void.

Original Prayer Clause

Clause (b)

Pass a decree of declaration in favour of plaintiffs and against the defendants, thereby declaring any purported documents such as, Family Settlement, Relinquishment

Deed/Deeds, Affidavits etc. in respect of property bearing No. W-105, Greater Kailash Part II, New Delhi-110048, signed and executed by the plaintiffs as illegal, null and void.

Proposed amendment

Pass a decree of declaration in favour of plaintiffs and against the defendants, thereby, declaring any purported documents such as, purported memorandum of family settlement on non judicial stamp papers dated 4.4.2006, possession letters dated 4.4.2006, letters to MCD for mutation dated 4.7.2006, the power of attorney and special power of attorneys dated 29.5.2006 and any other document, deed, affidavit etc. in respect of property bearing No. W-105, Greater Kailash Part II, New Delhi-110048, signed and executed by the plaintiffs being forged, fabricated, manipulated, interpolated, illegal, null and void, as the same were obtained fraudulently and under misrepresentation of facts and is not binding on the plaintiffs.

Original Clause (c)

Pass a decree of Mandatory Injunction in favour of plaintiffs and against the defendants, whereby directing the defendants to remove any construction from the plot bearing No. W-105-A and W-105-C, Greater Kailash Part II, New Delhi-110048, the same being illegal and done without authority.

Proposed amendments

Pass a decree of mandatory injunction in favour of the plaintiffs and against the defendants, whereby directing the defendants to revert back the possession of part "A" & "C" of the property bearing no. W-105, Greater Kailash-II, New Delhi-110048 to the plaintiffs, after removing any construction done on the said "A" & "C" portion illegally and without any authority

10. It would be seen that the amendments sought to be introduced in the Plaint by way of the present Application are largely based on the

case of the Appellants made out in the Replication except withdrawal of the admissions therein or some contradiction. We are in agreement with the contention raised by learned counsel for the Respondents that by way of an amendment a party cannot be permitted to withdraw the admission made in the pleadings to the disadvantage of the other party. The learned Single Judge in our view has rightly permitted the Appellants not to withdraw the original paragraphs 9 and 11 of the Plaint and to add the amended paragraphs to paragraphs 9 and 11 of the original Plaint. The effect of the same would be that no admission would be withdrawn and also the Written Statement and the Replication thereto would remain the same and would call for no amendment. The Respondents will be only required to reply to the additional paragraphs introduced by amendment in the Plaint. Any contradiction which may arise because of this act of the Appellants would enure to the benefit of the Respondents and will thus cause no prejudice to them.

11. We may note that these are additional facts that have come to the knowledge of the Appellants after the filing of the Written Statement which are required to be essentially determined for the just decision of the lis between the parties regarding the suit property. We are in this regard fortified by the dicta of the Hon'ble Supreme Court in *Rajesh Kumar Aggarwal* (Supra) as under:

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to sub-serve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

12. These amendments are also required to be carried out for the reason that for this relief the Appellants are not entitled to file a fresh Suit in view of the bar under Order II Rule 2 and hence the additional facts which are sought to be urged should be permitted and at the same time no prejudice should be caused to the Respondents. This is the mandate of the Code of Civil Procedure in terms of Order 6 Rule 17 CPC wherein the first portion of the rule being directory vests

discretion in the Court at any stage of proceeding to allow either party to alter or amend the pleadings and on such terms as may be just however, the second portion being mandatory ordains a duty to the Court to allow all such amendments which may be necessary for the purpose of determining the real questions in controversy between the parties. At this stage, the Court cannot go into the veracity of the pleadings of either of the parties. By retaining the facts stated in the Plaint in paragraphs 9 and 11 as stated earlier the admissions and contradictions made in the Replication will also not be withdrawn as the parties would be required to file the Written Statement and Replication only to the additional averments made in paragraphs 9 and 11. Also contradiction made by the Appellants in this regard would enure to the benefit of the Respondents.

13. For the aforementioned reasons we also find no infirmity in the impugned order permitting amendments by adding paragraphs 10A to 10H to the original para 10.

14. As regards amendments in paragraph 17 and prayer clause which have been disallowed by the learned Single Judge, it may be noted that in these two paragraphs, the Appellants only plead the cause of action as per the facts stated in the Replication and amendment Application and pray for reliefs in terms thereof. Once the amendments by way of additions to paragraphs 9, 10 and 11 were allowed, the additions proposed in paragraph 17 and clause (b) and (c) of the prayer clause

are a sequitur thereto and we find no justification in declining these amendments. In the plaint the Appellants had prayed for declaring the purported documents such as, family settlements, Relinquishment Deed/Deeds; Affidavits etc in respect of property being No.W-105, Greater Kailash Part II, New Delhi-110 048, signed and executed by the Appellants as illegal, null and void. By way of amendment in para 17 and prayer clause (b) and (c) the consequential factum of forgery is sought to be added to the cause of action and the relief in terms thereof. According to the Appellants they came to know of the forgery only from the written statement, and now even the Respondents urge that the MOU filed by the Appellants is a forged and fabricated document. It is thus essential that these facts are adjudicated in the trial for the just decision of the case.

15. The Impugned Order is, therefore, modified to the extent that the additions in paragraph 17 and prayer clause (b) and (c) sought to be brought by the proposed amendments are allowed. The original facts stated in the Plaint and the Replication would continue to be part of the pleadings. The Respondents would be entitled to file Written Statement to the additional facts permitted to be added by way of the amendments and the Appellants may file their Replication thereto. The amended petition be now filed within three weeks.

16. The Appeals and pending Applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

NOVEMBER 12, 2010
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