

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

+ **I.A. No. 138/2012 (O.VI R.17 CPC) in CS (OS) 526/2007**

% Reserved on: 25th October, 2013
Decided on: 12th March,, 2014

SMT. CHANDRA PRABHA

..... Plaintiff

Through: Dr. K.S. Sidhu, Sr. Advocate with Ms.
Maldeep Sidhu, Advocate.

versus

SHRI SATISH C. SHARMA & OTHERS DE+ Defendants

Through: Mr. K. Bajpai, Proxy Advocate for
Defendant No. 2.
Mr. Atul Nigam, Advocate for
Defendant Nos. 3A to 3D

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this application under Order VI Rule 17 CPC the Plaintiff seeks to amend the plaint. It is the case of the Plaintiff that from the issues framed on legal advice it has come to its notice that there are some deficiencies in the drafting of the plaint. During the pendency of the suit one of the Defendants Bawa Daan Singh, Defendant No. 4 died, who had been impleaded as legal representative of Bawa Milkha Singh one of the five trustees appointed. The only relief sought against Bawa Milkha Singh was an order directing him to produce such accounts and other records relating to the Trust, as may have fallen into his possession on the death of his father-in-law. Since law does not permit substitution by another legal representative of the original legal

representative, the name of Bawa Daan Singh was ordered to be deleted without any substitution and thus the same has necessitated consequential and incidental modification in the plaint. By the proposed amendment the Plaintiff seeks to omit Paragraphs 4, 6, 8, 9 and 11 in the original plaint and add amended paragraphs 5, 8, 9, 11 and 12. The prayer clause is also sought to be amended to improve its conformability in an administration suit.

2. The case of the Plaintiff is that late Pandit Mulchand Sharma, father of the Plaintiff died on 25th December, 1939, leaving behind five minor surviving children and his widow. Late Pandit Mulchand Sharma executed an instrument in the form of a Will on 10th December, 1937 which came into operation on the date of his death, that is, 25th December, 1939. The said instrument was in fact a Trust in terms of Section 59 of the Indian Trust Act, 1882 which inter alia declared that his entire estate consisting of movable and immovable properties shall vest on his death in five trustees named therein who shall act jointly to manage it for the benefit of the minor children and widow. It is further stated that the document dated 28th May, 1941 filed in Suit No. 2166/1990 was neither the original copy of Will much less a certified copy of the original Will proved before the Probate Court registered and deposited with the Registrar of Wills maintained by the

District Judge, Delhi in accordance with the provisions of Section 294 of Indian Succession Act. The instrument had been kept concealed from the Plaintiff till the middle of the year 1993. It is further alleged that after obtaining the probate the trustees misused the same for their ulterior motives and not for the purpose for which it was granted. The trustees started transferring the property to the main beneficiaries soon after the Plaintiff attained the majority. Though the issues have been framed, however since the amendments are essential the same be permitted to be carried out. Reliance is placed on *Rajesh Kumar Aggarwal and others vs. K.K. Modi and others*, AIR 2006 SC 1647 and *Mangal Dass Sant Ram Gauba vs. Union of India and others*, AIR 1973 Delhi 96.

3. Learned counsel for the Defendants contends that the Plaintiff had filed the applications being I.A. Nos. 6043/2007, 6044/2007 and 6045/2008 under Section 151 CPC read with Section 55 and 56 of Indian Trust Act, 1882, under Section 74 read with Section 60 of Indian Trust Act and Section 68 of the Indian Trust Act respectively. This Court vide a detailed order dismissed these three applications on the ground that it was not inclined to pass any order in favour of the Plaintiff in those applications since the rival submissions raised by the parties were required to be examined at the time of

trial of the matter. The Plaintiff filed an appeal before the Division Bench which was also dismissed. In fact the plaint itself is not maintainable. Further there is no cause of action in the amended plaint. The prayers have also been changed. Thus the amendments at this belated stage when the issues have already been framed are impermissible. The Plaintiff has failed to show that in spite of due diligence the parties could not have sought the amendments before the commencement of trial. Reliance is placed on *Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others*, 2006 (12) SCC 1 and *Vidyabai and others vs. Padmalatha and another*, 2009 (2) SCC 409.

3. I have heard learned counsel for the parties.

4. The facts leading to the filing of the present suit are that the Plaintiff is the daughter of late Pandit Mulchand Sharma who died on 25th December, 1939. He was survived by his widow and five minor children. Late Pandit Mulchand Sharma left behind a Will dated 10th December, 1937 whereby he vested his entire properties immovable and as well as movable in five persons who were to manage the said properties and ensure that the family of the deceased was looked after and the children are educated and married. In a probate petition filed, a certificate of probate was granted on 28th May,

1941. The grievance of the Plaintiff is that the entire estate of her late father was distributed amongst the brothers of the Plaintiff which factum she came to know from the proceedings in Suit No. 2166/1990 and thus by the present plaint she prays for a decree of execution of the Trust by seizure and impounding of the properties mentioned in the prayer clause. The case of the Plaintiff in the plaint itself is that the Will dated 10th December, 1937 was an instrument of Trust and the executors-cum-trustees were under a duty to give information as to the instrument of the Trust to the Plaintiff as one of the legatees of the trust however, they deliberately omitted to do so. The Defendant Nos. 1, 2 and 3 herein failed to implead the Plaintiff herein in the Suit No. 2166/1990 where she herself got impleaded as a Defendant under the orders of the Court on an application under Order I Rule 10 CPC. The Plaintiff who was one of the legatees was a minor when the executors obtained the Probate in 1941 and continued to be the same even after her marriage in 1951. The Trust was not a passive Trust but an expressly created active trust for the benefit of the minors.

5. As noted above the Plaintiff had filed three applications under the Indian Trust Act which applications were dismissed by this Court and the appeals against the same were also dismissed. Finally on 17th August, 2011

this Court framed the issues whereafter the present application seeking amendment of the plaint has been filed.

6. Order VI Rule 17 CPC provides that the Court may at any stage of the proceedings allow either party to alter or amend its pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties, provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Thus the twin requirements are whether the amendment is necessary for the determination of the real question in controversy and that the party could not have sought the amendment despite due diligence before the commencement of trial. It may be noted that the stand now taken was also the stand of the Plaintiff in the original plaint. The stand of the Plaintiff is that in view of the issues framed on legal advice it noticed deficiencies in the pleadings. In the present case the issues have been framed. However, the evidence of the Plaintiffs witnesses has not been recorded as yet. While framing the issues, learned counsels for the parties had duly consented to the issues to be framed, thus

now the Plaintiff cannot take a plea that since it will not be able to prove its case on the basis of the pleadings already there, it should be permitted to change the pleadings and consequently the prayer clauses.

7. The proposed amendments are as under:

Original Plaintiff	Amended Plaintiff	Corresponding Changes
Paragraph 1	Paragraph 1	None
Paragraph 2	Paragraph 2	None
Paragraph 3	Paragraph 3	Addition- The plaintiff's complaint is only this much that the document accompanying the so-called probate is not even a copy, much less a certified copy of the original will proved before the probate court, registered and deposited in the register of wills maintained by the district judge, Delhi in accordance with the provisions of Section 294, Indian Succession Act read with rules contained in Vol.II of rules and orders of the High Court.
Paragraph 4	Omitted	-
Paragraph 5	Paragraph 4	Omission – Plaintiff's in suit No. 2166/1990 designedly and deliberately omitted to implead the plaintiff herein as one of the defendants in that suit. She got herself added as a party defendant under orders of the court made on her application under order 1 Rule 10 CPC.
Paragraph 6	Paragraph 5	Omission – Statutory obligation was placed on the executors/ trustees to exhibit, within one year of the grant an account of the trust property, showing their assets which came to their hands and disbursements thereof. They willfully omitted to file an inventory and accounts in Court.
Paragraph 7 & 8	Paragraph 6	None
Paragraph 9 & 10	Paragraph 7 & 8	None
Paragraph 11	Paragraph 9, 11 & 12	Addition – In utter disregard of the mandatory provisions of the trust act, eg of sections 47 & 48 one of the trustees, namely L. Prem Lal Gupta, singly executed the deed of conveyance dated 12.07.1954 in favour of the male beneficiaries as transferees. He signed it for himself as a trustee

		and then added his second signatures, purporting to do so as a delegate of another trustee, L. Ralya Ram. Later, in the year 1958, third male beneficiary obtained a conveyance in his favour as transferee under the signatures of his brother, Harish Chandra Sharma who signed as a delegate of L. Ralya Ram aforementioned. In other words, the third conveyance is the grossest fraud inasmuch as none of its four executants was trustee appointed by the author of the trust.
Paragraph 12	Paragraph 10	Addition – Bawa Daan Singh died during the pendency of the suit. His name has already been deleted from array of defendants without any substitution. The liability to render accounts now lies on the defendants who are holding the trust property.
Paragraph 13	Paragraph 13	None
Paragraph 14	Paragraph 14	None
Paragraph 15	Omitted	Omitted – Plaintiff filed suit No. 1573/1996 for rendition of accounts and injunction against her brothers and members of their families.
Paragraph 16	Paragraph 16	None
Paragraph 17	Paragraph 17	None
Prayer	Prayer	None

8. It is not the case of the plaintiff that the proposed amendments were not in her knowledge when the plaint was filed. All these facts were in the knowledge of the plaintiff/applicant at the time of filing of the plaint. Hence, I find no merit in the application and the same is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 12, 2014
‘vn’