

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.05.2016

+ **FAO(OS) 91/2016**

GITA SARAN SINGH

... Appellant

versus

SABITA OBEROI AND ANR

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Pradeep Dhingra

For the Respondent No.1 : Mr Samar Bansal with Mr Vinayak Mehrotra

For the Respondent No.2 : Mr Sachin Sood

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been filed by the appellant/plaintiff being aggrieved by the order dated 08.02.2016, whereby the learned Single Judge has refused to frame an issue with regard to an alleged agreement having been arrived at between the parties on 07.09.2002. In the impugned order it is recorded as under:-

“Neither in the plaint nor in the prayer clause, there exists any pleading or prayer made seeking shares in terms of an oral settlement of a particular date or a settlement deed of a

particular date. No such issue with respect to settlement can hence be framed as is urged on behalf of the plaintiff.”

2. We are of the view that this observation of the learned Single Judge is not borne out by the record. Paragraph 5 of the plaint, as originally filed, reads as under:-

“5. That even on 7th September, 2002 the parties in the presence of (a) Mr. Saran Singh, (b) R. S. Bedi and (c) M. J. Bhalla had agreed that the property No. C-12 Safdarjung Development Area (Comm. Centre) New Delhi shall be sold; and that out of the sale proceeds, Rs One Crore shall be paid to Defendant No.1, while Rs. 20 lacs shall be kept in trust or Fixed Deposit for Charities and the balance amount of the sale proceeds shall be shared equally by the 3 sisters i.e. parties to the suit. However, this was never done.”

3. In the written statement filed by the defendant No.1 (respondent No.1 herein), the said paragraph 5 of the plaint has been dealt with as under:-

“23. That the content of para 5 of the plaint are wrong and misleading and are denied. It is submitted that at the meeting of 7th September 2002, the executor of the will dated 27.03.2002, Mr R. S. Bedi, son of Late Dr. Narendera S. Bedi, had handed out copies of the will to all persons present. No agreement to sell the property at C-12, Safdarjung Development Area was reached at the said meeting. Only certain discussions regarding the distribution of the properties of Late Lt. Col. Sohan Singh Bedi in terms of his will dated 27.03.2002 were held.”

4. From the above, it is evident that the material proposition of fact, which has been alleged by the appellant/plaintiff, has been partly denied by the defendant No.1/respondent No.1. We say partly because the holding of a meeting on 07.09.2002 is not denied. However, the agreement itself with regard to the sale of the property, being C-12, Safdarjung Development Area (Commercial Centre), New Delhi and the manner in which the sale proceeds are to be distributed, are denied by the defendant No.1/respondent No.1.

5. In these circumstances, the observation of the learned Single Judge to the effect that there is no reference in the plaint regarding an agreement of a particular date is not correct. The learned counsel for the respondent No.1 submitted that there is no reference in the prayer and, therefore, no issue can be struck on the aspect of the alleged agreement of 07.09.2002. We do not agree with this submission because issues arise in terms of Order 14 Rule 1 when a material proposition of fact or law is affirmed by one party and denied by the other.

6. The averment contained in paragraph 5 of the plaint with regard to the agreement on 07.09.2002 is a material proposition of fact which has

been denied by the defendant No.1/respondent No.1 in paragraph 23 of the written statement submitted by the said defendant No.1/respondent No.1. Therefore, an issue is required to be framed on this aspect of the matter. We set aside the finding of the learned Single Judge that no such issue with regard to the agreement dated 07.09.2002 can be framed. We are remitting the matter to the learned Single Judge for framing of an appropriate issue on this aspect of the matter.

7. The learned counsel for the appellant/plaintiff states that he would be filing an application under Order 6 Rule 17 seeking amendment of the plaint. He further submits that paragraph 2 of the impugned order ought not to be taken as barring the right of the appellant/plaintiff to file an amendment application. The learned counsel for the defendant No.1/respondent No.1 states that paragraph 2 of the order does not, in point of fact, prohibit the appellant/plaintiff from moving an application seeking amendment of the plaint. We agree with this submission made by the learned counsel for the defendant No.1/respondent No.1. However, we may observe that in case an amendment application is filed before the learned Single Judge, the same shall be decided in accordance with law and all defences would be open to the defendant No.1/respondent No.1.

8. List before the learned Single Judge, in the first instance, on 09.08.2016. The appeal stands allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

**MAY 10, 2016
SR**

