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IN THE HIGH COURT OF DELHI AT NEW DELHI
CM(M) 408/2015 & C.M. No.8359/2015
VINOD KUMAR

..... Petitioner

Through Ms. Bhabna Das, Adv.
versus

KAUSHALYA DEVI & ORS

..... Respondents

Through Counsel for the respondents.
(appearance not given)

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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20.01.2016

This petition is directed against the impugned order dated 07.03.2015 vide which the application filed by the plaintiff under Order 6 Rule 17 of the CPC seeking amendment in the plaint had been declined. The primary reason which had weighed in the mind of the Trial Court was that even if the prayer made in the application is allowed, the bar of Section 34 of the Specific Relief Act would operate against the plaintiff.

The present suit is a suit for injunction which had been filed by the step son against his step mother. Written statement was filed in the said proceedings. In the course of the written statement, a defence had been taken by the defendants that the property of the deceased (the father and husband of the parties) had been sold during his lifetime in favour of the defendants vide certain unregistered documents. In view of the aforementioned averments which had been made in the written

statement, the present application under Order 6 Rule 17 of the CPC had been filed. By way of the amendment application, he seeks to incorporate the prayer of declaration; declaration sought is to the effect that the sale of the suit property (House No. A-6, Old Jasola Village, Delhi) be declared illegal and void; since the defendants were also raising construction, a decree of permanent and prohibitory injunction be passed against them prohibiting them from alienating the suit property.

Order 6 Rule 17 of the CPC gives a right to the party to amend the pleadings and if it is necessary for just adjudication of the controversy between the parties. The Court may at any stage of the proceedings permit the party to amend its pleadings. Admittedly the stage when this application filed was at the initial stage. The merits of the controversy i.e. whether the suit would be barred under Section 34 of the Specific Relief Act or whether it would be maintainable (as is the argument of the learned counsel for the petitioner) may not be necessary to be gone into at the stage when the application for amendment is to be considered. It is only a pleading which is permitted to be incorporated; the merits of the same have to be decided by the Court in accordance with law.

In this view of the matter, the prayer made in the petition is allowed. The amended written statement is taken on record. Impugned order is set aside. Petition disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 20, 2016

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