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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1212/2016 & CM Nos.43951-43952/2016
DINESH SWAROOP MISHRA Petitioner
Through Mr.Pawan Sharma, Advocate
versus
REKHA MISHRA & ANR Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **02.12.2016**

CM No. 43952/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1212/2016 & CM No.43951/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 19.8.2016 by which the application filed by the respondent under Order 6 Rule 17 CPC for amendment of the plaint was allowed.
2. This is a dispute between husband and wife. The plaintiff/wife/respondent filed a suit for declaration of mandatory and permanent injunction against the petitioner and Anjuman Co-operative Group Housing Society Limited. She has sought a decree of declaration declaring her to be the co-owner in respect of flat bearing No.402, Block A of Anjuman Co-operative Group Housing Society Ltd., Plot No.20, Sector 12 Dwarka, New Delhi. A mandatory injunction was also sought to include the name of the respondent in its record as a co-owner.
3. On 19.8.2016 when the matter was fixed for P.E., the respondent moved the present application for amendment. In the said application the only addition that is sought to be added is the relief of partition and

possession. Hence, the respondent now also seeks a decree of partition in her favour and half undivided share in the suit property and also seeks a decree of possession.

4. The trial court allowed the application noting that the amendment is necessary and that the trial has not yet commenced. It also noted that no new facts or relief arising for different cause of action has been pleaded.

5. I have heard learned counsel for the petitioner. He has made his submissions including submitting that the nature of the suit has changed by the amendment. He also submits that no opportunity was given to him to file a reply. After completing arguments he also sought an adjournment saying that he is not fully prepared to argue the case.

6. There is no reason to give adjournment as the request has been made after arguments have already been completed and the court has indicated that the Court is not inclined to agree with the submissions made.

7. In my opinion, there is no merit in the present petition. The respondent has already sought for a declaration that she is the co-owner of the suit property. In case such a relief is granted to her necessary consequential relief would be partition of the suit property. This is what is sought to be added by the proposed amendment. The amended relief is based on the same facts. The nature of suit does not change. There is no ground to interfere in the impugned order.

8. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

DECEMBER 02, 2016/n