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

+ **CM(M) 266/2017 & CM Nos.8888-89/2017**

RAMINDER GOEL & ANR Petitioners
Through **Mr.Divij Soni, Advocate**

versus

RAVINANDAN GOEL & ORS Respondents
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **06.03.2017**

CM No.8888/2017 (*exemption*)

Allowed subject to all just exceptions.

CM(M) 266/2017 & CM No.8889/2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 17.12.2016 by which an application filed under Order 6 Rule 17 CPC for amendment of the written statement was dismissed.
2. Respondents No.1 and 2 have filed the present suit for partition against the petitioners and respondents No.3 and 4. The parties are real brothers being the son of Sh.Tara Chand. Petitioner No.2 is the son of petitioner No.1.
3. The fact of the matter is that the petitioners filed the written statement. Thereafter, in 2009 they again moved an application for amendment of the written statement and the application was allowed. In 2010 the amended written statement was filed. The evidence of the parties is over and now the matter is fixed for argument. The petitioners have again

filed an application seeking another amendment in the written statement. The submission of the petitioners is that inadvertently certain submissions have not been incorporated in the amended written statement. By the said application, the petitioners seek to add paras (5a) to (5g) to the written statement. The stress of the addition is, as the plaintiffs/respondents No.1 and 2 are not in possession of the suit property, the present suit for partition would not lie. It is further sought to be added that the reliance of the plaintiffs/respondents No.1 and 2 in the present suit is on an alleged compromise decree. It is stated that the decree is not registered and hence, the said plaintiffs have no right, title or interest to the suit property. Further it is urged that one of the parties to the compromise is one Delhi Vocational School who is a necessary and proper party and has not been impleaded.

4. The trial court by the impugned order noted that the facts which were sought to be introduced by way of amendment to the pleadings are not necessary for proper and effective adjudication of the controversy between the parties. Trial court also noted that the necessary averments regarding compromise decree dated 08.05.1995, the evidence led by the parties is already on record and dismissed the application.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the petitioners relied upon the judgment of the Supreme Court in the case of ***State Bank of Hyderabad v. Town Municipal Council, [2006] Supp. (9) SCR 919*** to contend that proviso to Order 6 Rule 17 of the CPC is not applicable as the suit is prior to 2002. He also relied upon the judgment of the Supreme Court in the case of ***Surender Kumar Sharma v. Makhan Singh, (2009) 10 SCC 626*** to contend that even belated amendments can be allowed.

7. A perusal of the written statement as filed in 2010 after the first amendment application was allowed would show that all the necessary averments are on record in the written statement. It stated that the plaintiffs/respondents No.1 and 2 are not in possession of any part of the suit property and that the plaintiffs are not entitled to any relief. It is further pleaded that the suit of the plaintiffs was based on a compromise judgment/ decree dated 08.05.1995. It is further stated that the said compromise judgment/decreed has neither been got engrossed on requisite stamp papers nor registered with the Sub Registrar, and therefore, it has lost its legal enforceability and execution and the plaintiffs cannot be allowed to base their claim in the suit on the said compromise judgment/decreed.

8. It is manifest that the substantial facts which are sought to be incorporated now are already on record of the suit. The petitioners are unnecessarily indulging themselves in hyper technicalities by filing applications at a late stage. Merely, because the law permits belated amendments, a litigant cannot be permitted to file amendment applications repeatedly.

9. In my opinion, there are no grounds to interfere with the impugned order passed by the trial court. The petition stands dismissed. All the pending applications also stand dismissed.

10. A copy of this order be given *dasti* under the signature of the court master to the petitioners.

JAYANT NATH, J.

MARCH 06, 2017/v