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

+ **CM(M) 342/2017**

ANIL KAULA

..... Petitioner

Through Mr.Kanwal Chaudhary, Advocate
versus

RAJIV KAULA & ORS

..... Respondents

Through Mr.Anupam Srivastava and
Dr.Chandra Shekhar, Advocates for R-1.
Mr.Jagrup Singh Hazra, Advocate for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **28.03.2017**

CM Nos.11862/2017 and 11864/2017 (exemption)

Allowed subject to all just exceptions.

CM(M) 342/2017 and CM No.11863/2017 (stay)

1. The present petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 09.11.2016 by which an application filed by respondent No.1/plaintiff under Order 6 Rule 17 CPC read with Order 1 Rule 10 CPC was allowed.
2. Respondent No.1 has filed the present suit for partition of the estate left behind by deceased Sh. Prithvi Nath Kaula, the father of the parties/father-in-law of respondent No.5. In the plaint it is averred that Shri Prithvi Nath Kaula died intestate on 30.08.2009.
3. The petitioner has filed his written statement whereby it is claimed that Shri Prithvi Nath Kaula did not die intestate and he left behind a Will dated 01.07.2004 as per which the title in the property at W-21, Green Park New Delhi has been bequeathed to defendant No.1/petitioner.

4. Parties have led their evidence and the matter was at the final stage when the mother of the parties/mother-in-law of respondent No.5 expired on 29.03.2015. It is the contention of the respondents that the deceased mother/defendant No.2 had executed a Will dated 19.03.2012 whereby she bequeathed her undivided 1/6th share in the suit property in favour of various parties including her son-in-law i.e. respondent No.5. It is needless to add that no portion of the property has been allegedly bequeathed by the deceased defendant No.2 in favour of the petitioner.

5. Based on the above event, the plaintiff/respondent No. 1 has filed the application under Order 6 Rule 17 CPC for amendment of the plaint and Order 1 Rule 10 CPC for impleading respondent No.5 as a party to the suit. As per the amendment application, the new shares of the parties which changed on account of the Will of the deceased defendant No.2 were sought to be brought on record.

6. The trial court by the impugned order noted that respondent No.1/plaintiff is compelled to seek amendment of the suit and to add respondent No.5 in the array of defendants due to the sudden demise of defendant No.2 , the mother of the parties and held that the amendments are necessary for the purpose of complete adjudication of the controversy in issue. The application was allowed.

7. I have heard learned counsel for the parties.

8. Learned counsel of the petitioner has submitted that the suit as framed pertains to the estate of late Shri Prithvi Nath Kaula i.e. the father of the parties/father-in-law of the respondent No.5. He submits that the controversy is needlessly sought to be enlarged by now introducing the Will of the deceased defendant No. 2/mother of the parties/mother-in-law of the

respondent No.5. He submits that now entirely new set of facts would have to be examined by the court and the parties would have to again lead evidence on the validity of the Will as claimed and relied upon by the respondents. Hence, he submits that the amendment has been wrongly allowed.

9. Learned counsel for the respondents relies upon the judgment of the Supreme Court in the case of *Rajesh Kumar Aggarwal & Ors. vs. K.K.Modi & Ors., AIR 2006 SC 1647* to contend that subsequent events should be taken note of in order to shorten the litigation between the parties.

10. In my opinion, there are no reasons to interfere with the impugned order. Except respondent No.5, the parties are siblings and dispute pertains to the estate left behind by the father and subsequently, by the mother of the parties. The parties are the same. It cannot be said that by the amendments which are now sought to be done by the respondents, the nature of the suit undergoes a change. No doubt there will be some delay in disposal of the suit as evidence had already been recorded in the matter. However, in my opinion, it would be in the interest of justice for determining the real controversy between the parties that the amendments have been allowed. Relegating the parties to filing of a fresh suit regarding the estate of the deceased defendant No.2 in the facts of this case is not warranted. In view of the above, there are no reasons to interfere with the impugned order.

11. The petition is accordingly dismissed.

12. As requested by the learned counsel for the petitioner, the petitioner is granted four weeks' time to file the written statement to the amended plaint.

MARCH 28, 2017/rb

JAYANT NATH, J