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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.809/2017 & CM No.27239/2017 (for stay).
KULDEEP SINGH Petitioner
Through: Mr. Babul Lal, Adv.
versus
NARENDER SINGH NARESH Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.08.2017**

CM No.27238/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.809/2017 & CM No.27239/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 10th April, 2017 in CS No.16929/16 of the Court of Additional District Judge-02, Dwarka Courts, New Delhi) of dismissal of the application of the petitioner / plaintiff for amendment of the plaint, after hearing of final arguments in the suit had commenced.
4. The learned Additional District Judge has reasoned that the amendment was barred by the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) and no ground for allowing the amendment at that stage had even been pleaded.
5. I have heard the counsel for the petitioner / plaintiff.
6. The petitioner / plaintiff instituted the suit from which this petition arises, *inter alia* for the relief of partition, against his “adoptive father”, of the property left behind by his “adoptive mother”.

7. The amendment, sought was to plead a custom in the family of the adoptive father of adoption of a major child also and of oral adoption.

8. I have perused the application for amendment. It is pleaded therein that though the petitioner / plaintiff in the reply dated 16th December, 2011 to the notice issued by the respondent / defendant preceding the suit had pleaded oral customary adoption but it came to light at the time of preparation of the final arguments that the factum of oral customary adoption had not been pleaded in the plaint though stated in the reply dated 16th December, 2011.

9. The learned Additional District Judge has in the impugned order rightly observed that there is nothing even pleaded for the Court to come to the conclusion that the plea sought to be raised could not be taken before trial, inspite of due diligence. The learned Additional District Judge has further correctly reasoned that allowing the amendment at this stage would amount to commencing the trial *denovo*.

10. No error requiring interference in the impugned order is made out.

11. Option given to the counsel for the petitioner / plaintiff to, if withdraws this petition, challenge the order denying the amendment in the appeal if any preferred against the judgment in the suit, has not been accepted.

12. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2017

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