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

+ CM(M) 1189/2015 & CM No.29311/2015

SIMRAN KAUR BHOGAL & ANR Petitioners
Through Mrs.Mala Goel, Advocate

versus

MANORANJAN SINGH & ORS Respondents
Through Mr.Yakesh Anand & Mr.Amit
Mathur, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.03.2017

1. By the present petition under Article 227 of the Constitution of India the petitioners seek to impugn the order dated 07.09.2015 by which an application filed under Order 6 Rule 17 CPC was dismissed.
2. The petitioners/plaintiffs are said to be minor daughters of late Sh.Amarjeet Singh Bhogal. They have filed the present suit through their mother and natural guardian Smt. Anita Bhogal. The suit is filed seeking a decree of declaration declaring that the petitioners are the legal heirs of late Smt.Joginder Kaur, grandmother and late Sh.Amarjeet Singh, their father. A decree of permanent injunction is also sought to restrain the respondents from selling, alienating, disposing off the asset of late Smt.Joginder Kaur and late Sh.Amarjeet Singh Bhogal.
3. The petitioners moved an application under Order 23 Rule 1 CPC for permission to withdraw the suit with liberty to file a fresh suit. The respondents objected to the same. The trial court recorded that there is no

formal defects in the present suit and hence, the petitioners cannot be permitted to withdraw the suit under Order 23 Rule 1 CPC. However, in case they want to include the relief of partition, liberty was granted to the petitioners to move an appropriate amendment application which would be decided as per law. The application was accordingly dismissed on 22.04.2013.

4. Thereafter, within a short period, i.e. in October, 2013 the petitioners had filed the present application under Order 6 Rule 17 CPC for amendment of the plaint. In the amendment application, it is stated that the petitioners seek to add relief of partition. However, para 6 of the application, states as follows:

“6. That the entire suit will have to be amended as the defendants are not giving the plaintiffs their share. The paras 1 to 12 of present plaint will have to be deleted and paras 1 to 39 of the proposed amended plaint incorporated then paras 13 to 15 of the present plaint will have to be deleted and paras 40 to 42 of the proposed amended plaint will have to be incorporated. As far as the prayer clause is concerned the prayer in above suit will have to be deleted and prayer given in para 43 proposed plaint incorporated.”

5. The trial court by the impugned order noted that the cause of action is sought to be altered and the nature of the suit and the character of the plaint will completely be changed if the amendment is allowed. It also noted that the petitioners have not stated that they have received information subsequent to filing of the present suit which they wish to incorporate. The issues have already been framed. The application was accordingly dismissed.

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

7. The learned counsel for the respondents has vehemently opposed the present petition. He submits that the petitioners have already initiated a suit for partition of one property in Gurgaon. She has filed objections to the probate petition filed regarding Will of grandmother Smt.Joginder Kaur. She has also filed the present suit. Further, it is stated that mother of the petitioners had also settled the disputes with the respondents whereby she had accepted a sum of Rs.50 lacs. Hence, it is urged that the present application is an abuse of process of the court.

8. There are two things which are apparent.

Firstly, the trial court by its order dated 22.04.2013 while dismissing the application of the petitioners under Order 23 Rule 1 CPC had itself given liberty to the petitioners to file appropriate application for amendment of the plaint. Pursuant to this liberty, the present application for amendment has been filed.

Secondly, the suit as filed seeks declaration that the petitioners are the legal heirs of Smt.Joginder Kaur (Grandmother) and late Sh.Amarjeet Singh Bhogal. Implicit in the said relief is that in case the relief is granted, the petitioners have rights as legal heirs as stated in the Hindu Succession Act. Hence, by moving the application for amendment, and for addition of the relief for partition of assets left behind by Smt.Joginder Kaur, it cannot be said that the nature of the suit would change.

9. Despite the above position, I am not inclined to accept the present petition for the reasons that what the petitioners seek to do is change all the paras in the plaint and to add paras 1 to 42. It tantamounts to substituting the entire plaint with a fresh plaint. In a sense, the petitioners are trying to actually undo what the order of the trial court dated 22.04.2013 did not

allow, namely dismissing the application of the petitioners under Order 23 Rule 1 CPC.

10. In similar circumstances, I have already taken a view in the case of ***Arvind Garg v. Neeta Singhal, ILR(2014) 1 DELHI 334*** as follows:

“10. But that does not settle the matter. The amendment as proposed virtually tentamounts to substituting the whole plaint with a virtually new plaint. A perusal of the proposed amendments would show that each and every para of the original plaint, namely, paras 1 to 18 are sought to be substituted by new paras. There is no attempt to point out what is sought to be incorporated in the proposed amendment. The lines, phrases and words which are being added or deleted have not been mentioned in the present application. It is not possible to decipher from a reading of this application as to what is being amended or what is being deleted or what is being added. What is mentioned in the application is the way in which the paras would be read after the proposed amendment is carried out. Hence, it is not possible to find out as to whether any new cause of action is being introduced, whether admission made is sought to be replaced, etc. It is also not possible to make out whether the proposed amendments are necessary for the purpose of determining the real questions in controversy between the parties.

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19. What the plaintiff actually intend to do is not really alter or amend the pleadings but replace the entire pleadings with altogether new pleadings. In my view, complete replacement of old plaint with a completely new plaint is not permitted under Order 6 Rule 17 CPC. It may be possible to permit such a change in certain special circumstances under section 151CPC. But no such special circumstances are pleaded or argued.”

11. In view of the above, in my opinion, I see no reason to interfere with the impugned order passed by the trial court. The present petition is dismissed. However, liberty is granted to the petitioners to move appropriate

application for amendment of the plaint as permitted by the order of the trial court dated 22.04.2013. In case any such application is filed, the same may be considered as per law. All the pending applications, if any, dismissed.

JAYANT NATH, J.

MARCH 09, 2017/v