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

+ **FAO(OS) 84/2017 & CM APPL. 10929-10930/2017**

ASHOK KUMAR KATHURIA

..... Appellant

Through: Ms. Madhulika Agrawal for Mr. J.K.
Singh, Adv.

versus

OM PRAKASH KATHURIA (THR LEGAL HEIRS) & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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05.07.2018

This is the seventh hearing of the appeal which is directed against an order of the learned Single Judge made in the course of a suit filed in the year 2001. We notice, at the outset, that on the six previous occasions adjournment was sought for on one ground or the other. Even today, adjournment was sought on the ground that the counsel Mr. J.K. Singh cannot attend the Court.

The Court is of the opinion that the adjournment in these circumstances cannot be granted given that the suit has been pending for more than 17 years.

The learned Single Judge by the impugned order rejected an application to amend the suit (IA No.91/2011) to the extent of amending the list of properties. The suit had sought partition; it appears that a similar request for amendment had been made earlier – through an application IA No.3005/2006 which was rejected on 26.05.2009. That order was appealed against before the Division Bench which rejected the appeal. The Single Judge noticed and held as follows:

“12. A perusal of the order dated 26.5.2009 shows that this Court noted that issues have already been framed on 5.2.2004 and that the matter has been lingering on for one reason or the other. The plaintiff has not concluded his evidence. The order also notes that the plaintiff has failed to make out a case of due diligence and has not even pleaded the facts to be incorporated. This Court also noted that after amendment Order 6 Rule 17 a distinction is made between pre-trial amendment and amendments after commencement of the trial. This Court relied upon the judgment of the Supreme Court in Vidyabhai and Ors. vs. Padmalatha and Ors., (2009) 2 SCC 409 and dismissed that application.

13. The facts as stated and were sought to be added by the amendment of the plaint in IA No.3005/2006 are substantially akin to the present application. The plaintiff on the face of it has not been diligent in pursuing the application. In view of the above and in view of the earlier order dated 26.5.2009 which decision is applicable to the present decision also, the present application is dismissed.”

Having regard to the fact that the amendment sought was in respect of properties of which the appellant was quite aware of, but

was not diligent in making and seeking amendments at the appropriate stage and, furthermore, given the earlier abortive attempt, this Court is of the opinion that the Single Judge could not be faulted for rejecting the application for amendment of the plaint.

FAO(OS) 84/2017 is therefore dismissed without any merits.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 05, 2018
kks