

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

% Judgment pronounced on : 10th March, 2015

+ **I.A. Nos.12251/2014 and I.A. No.21133/2014**
in CS(OS) No.149/2011

SUNIL GUPTA Plaintiff
Through Mr. Anil Sapra, Sr. Adv. with
Mr. P.R. Agarwal & Mrs. Anju
Bhushan, Advs.

versus

NARGIS KHANNA Defendant
Through Mr. Harkirat Sawhney, Adv. with
Mr. Bakhshi Bikram Singh, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. This is a suit for partition filed by the plaintiff against the defendant in respect of the property bearing No. N-47, Panchsheel Park, New Delhi- 110017 (hereinafter referred to as the "suit property"). By this order, I propose to decide the pending applications, i.e.:-

- (i) I.A. No.12251/2014 (under Order I Rule 10 CPC read with Section 151 CPC, filed by the plaintiff)
- (ii) I.A. No.21133/2014 (under Order VI Rule 17 read with Section 151 CPC, filed by the plaintiff)

2. Brief facts for the purpose of adjudication of these applications are that the suit property belonged to one Shri Late Jagan Gopal

Dewan who died on 27th April, 2001. Till the time of his death, Shri Late Jagan Gopal Dewan used to reside in the suit property. He was survived by his wife Amrit Kala Dewan, his son Prem Kumar Dewan and his married daughter Nargis Khanna, defendant herein.

3. By virtue of his last Will and Testament dated 9th December, 1972, Shri Late Jagan Gopal Dewan bequeathed the suit property to his wife Amrit Kala Dewan. While Amrit Kala Dewan let out the first and the second floor of the suit property, she continued to reside on the ground floor of the suit property. Amrit Kala Dewan also died on 12th November, 2005 leaving behind her son and daughter to whom she bequeathed the suit property in equal share by virtue of her Will and Testament dated 6th October, 2004.

4. Though the Will dated 6th October, 2004 laid down as to how the suit property is to be divided amongst Prem Kumar Dewan and Nargis Khanna, both of them after the death of their mother felt that it was not practical to partition the suit property in the manner provided in the Will dated 6th October, 2004. Accordingly, Prem Kumar Dewan and Nargis Khanna entered into a Memorandum of Settlement dated 24th November, 2005 by virtue of which they agreed that each of them will have 50% undivided share in the suit property.

5. Prem Kumar Dewan who had been residing with his family in Kolkata and also had his business in Kolkata, sold his 50% undivided share in the suit property by virtue of sale deed dated 23rd June, 2008 to two persons namely, Mr. Suneet Seth and Mr. Sunil Gupta, plaintiff herein.

6. It is averred by the plaintiff that in the said sale deed, it was represented by Prem Kumar Dewan that he was the absolute owner/ sub-lessee and was otherwise well and sufficiently entitled to one half unspecified, undivided, indivisible and impartible sub-lease hold right in the entire suit property. Further, he was in exclusive physical possession of the entire second floor and terrace over and above the second floor and entire driveway adjoining property No.45 which he had acquired by means of Will dated 6th October, 2004 and Family Settlement dated 24th November, 2005 and he is fully entitled to sell, dispose of and transfer his one half share in the suit property.

It is further averred that it was represented by Prem Kumar Dewan that the tenants of the first floor of the suit property had not vacated the same after expiry of the lease period and so a declarative suit in respect thereto had been filed wherein status quo orders had been passed.

7. It is stated that Mr. Suneet Seth who had purchased 1/3rd of one half undivided share in the suit property, sold his entire share to the plaintiff. The plaintiff thereby became the exclusive owner of the one half undivided share of the suit property. The possession of the entire second floor and terrace over and above the second floor and one of the driveways leading to and meant only for the first and the second floor of the suit property, was given by Prem Kumar Dewan to the plaintiff.

8. It is the case of the plaintiff that defendant herein filed a civil suit No. 325/2009 under Section 44 of the Transfer of Property Act

against the purchasers i.e. Mr. Suneet Seth and the plaintiff herein alleging that the purchasers are not entitled to joint possession or enjoyment of the suit property belonging to an undivided family because the purchasers were not the members of the family of Late Shri Jagan Gopal Dewan. An application of interim injunction in the said matter was filed by the defendant herein which was dismissed vide order dated 10th July, 2009 by the Trial Court. However, allowing an application under Order 12 Rule 6 CPC filed by the defendant herein in the said suit, the Trial Court decreed that suit vide judgment dated 20th November, 2010 in favour of the defendant and against the purchasers i.e. Mr. Suneet Seth and the plaintiff herein.

In pursuance to the said judgment dated 20th November, 2010, the defendant evicted the plaintiff from the second floor of the suit property. However, judgment dated 20th November, 2010 was set aside in an appeal filed by the plaintiff against the said judgment and the possession of the second floor of the suit property was restored to the plaintiff vide order dated 6th September, 2011. Defendant filed an SLP against the said order dated 6th September, 2011 which was ultimately dismissed and possession of the second floor of the suit property was restored to the plaintiff. Accordingly, the possession was restored to the plaintiff on 21st November, 2004 in presence of one Notary Public, Mahender Singh, Advocate but it was found that gate of the second floor had been removed, air-conditioners had been removed, iron staircase leading to the servants quarter meant for the second floor had also been removed, electricity connection as

well as water connection had been discontinued and at least one half of the driveway had been blocked by the defendant for which separate proceeding are being initiated by the plaintiff.

9. Further, the defendant also filed another civil suit being CS (OS) No. 2056/2008 for recovery of possession against the tenant of the first floor of the suit property. Therein the defendant has impleaded her brother Prem Kumar Dewan as defendant No.2 who pleaded therein that he had sold his rights in favour of Mr. Suneet Seth and the plaintiff herein. On an application of Mr. Suneet Seth and the plaintiff herein in the said suit, which was allowed, Mr. Suneet Seth and the plaintiff herein were impleaded as defendants No. 3 and 4.

10. This Court passed a preliminary decree for possession in favour of the defendant herein while allowing her application under Order 12 Rule 6 CPC. Defendant No.1 therein (i.e. the tenant) was directed to vacate the first floor of the suit property within two months vide order dated 18th July, 2011 of this Court. Pursuant thereto defendant No.1 therein deposited the keys of the first floor of the suit property in this Court. The suit with respect to the relief of mesne profits/damages, arrears of rent is still continuing and pending trial before Court.

11. Subsequently, in view of the above order dated 5th May, 2014 the plaintiff filed an application being I.A. No.12251/2014 under Order I Rule 10 CPC read with Section 151 CPC seeking to implead DDA and also the brother of the defendant, Prem Kumar Dewan who had

sold his one half share in favour of the plaintiff as defendant No.2 and 3 in the suit. It was stated therein that it is necessary and in the interest of justice in order to effectively and fully adjudicate the controversy between the parties that the plaintiff be allowed to implead DDA and Prem Kumar Dewan as defendant No. 2 and 3 in the suit.

In reply to this application, it is averred by the defendant that the presence of the DDA as well as Prem Kumar Dewan sought to be impleaded are neither necessary for deciding questions in the proceedings nor their presence is necessary to enable this Court to effectively and completely adjudicate upon and settle the questions involved in the present suit as it would change the entire complexion of the litigation and raise controversies which are beyond the scope of the present litigation. It is averred that the presence of Prem Kumar Dewan, brother of the defendant is unwarranted in the light of questions involved in the present suit as the provisions of Order 1 Rule 10 CPC warrants that the Court has to test as to whether the presence of the party to be impleaded is warranted in the light of the questions involved in the suit and not by the fact that there may arise any other dispute which may incidentally affect the suit pending before the Court though same may not be the question involved in the present suit.

It is also averred that at the time this Court passed the order dated 5th May, 2014, the original documents were not before this Court as acknowledged in the same order. The Perpetual Lease

Deed and Perpetual Sub-Lease nowhere contemplates any such position of payment to the DDA and having the property converted from lease hold to free hold. The Perpetual Lease Deed is in favour of Panchshila Cooperative Society House Building Society Ltd. and not in any individual name where on payment of 50% unearned increase conversion of property is permissible. The Panchshila Cooperative Society House Building Society Ltd. is governed by the Delhi Co-operative Societies Act, 2003 wherein partition and subdivision of the plot and building is not permissible.

12. While in the application being I.A. No.21133/2014 under Order VI Rule 17 read with Section 151 CPC, the plaintiff seeks permission to amend the cause title, heading mentioned in Para 7 of the application. The plaintiff further seeks to add the paragraphs 19 K to 19 O in the plaint after paragraph 19 J as mentioned in Para 8 of the application. He further seeks to amend the suit valuation paragraph as mentioned in Para 9A of the application and add the prayers a-1, a-2, a-3 as mentioned in Para 9B of the application. It is pleaded that the expression defendant in the original plaint and the amended plaint dated 20th February, 2013 be substituted as defendant No.1. And the verification to the plaint be amended as mentioned in Para 9 D of the application.

It is stated that the amendments sought to be carried out will not cause any prejudice or injury to the defendants as the amendments sought are based on events subsequent or during pendency of the case and are based on various orders passed by

various courts in various litigations instituted by the parties involved in this matter. Also, some of the amendments are such facts which could not possibly be within the knowledge of the plaintiff at the time of filing of the suit because he was not a part of the family of the defendant or late Shri Jagan Gopal Dewan and have come to his knowledge subsequently. The amendments are sought to be made in the interest of justice, so as to ensure a final and effective decision in respect of various disputes and controversies involved in the present case. The same are necessary and proper for adjudication of disputes between the parties to the present suit.

13. In reply to the said application being I.A. No.21133/2014 under Order VI Rule 17 read with Section 151 CPC, the defendant contended that by the proposed amendments, the plaintiff intends to convert the suit for partition into a suit for declaration and consequential reliefs, which cannot be allowed.

14. It is contended that the amendment sought by the plaintiff for declaration in prayer clause a-1 that he be declared as co-owner/co-lessee in place of proposed defendant No.3 (Prem Kumar) is barred by Article 58 of the Limitation Act. The plaintiff in Para 21 of the original plaint has mentioned that the cause of action for the present case first arose on 23rd June, 2008 so the amendment sought is hit by Article 58 of the Limitation Act wherein a suit for declaration can be instituted within 3 years from the date when right to sue first accrues. The amendment so sought is barred by limitation.

15. It is averred that the plaintiff in the garb of the proposed amendments is in fact seeking Specific Performance of the Agreements to Sell entered into between the plaintiff and Prem Kumar Dewan and Mr. Suneet Seth. The defendant is neither privy nor party to any of these agreements to sell so the same cannot be allowed in the present case. The plaintiff is trying to impeach and unsettle the terms of family settlement dated 24th November, 2005

16. Proposed amendments sought for by the plaintiff are bad for mis-joinder of causes of action, parties and reliefs. The plaintiff by proposed amendments is changing the entire complexion and nature of the suit. He is challenging the legality, applicability and validity of Government Grants Act, 1895 as well as provisions of Delhi Co-operative Societies Act, 2003 and corresponding rules which is outside the purview and scope of the suit.

17. It is submitted that Panchshila Co-operative House Building Society Ltd. was granted lease in the year 1966 in respect to certain lands to be developed into residential colonies. Father of the defendant Shri Jagan Gopal Dewan being a member of the Society was allotted land on which he from his own funds got raised a dwelling house i.e. the suit property which eventually got bequeathed to the defendant and her brother Prem Kumar Dewan.

At the time of entering into covenants with Prem Kumar Dewan, the plaintiff was fully aware that the suit property vests in a Co-operative Society which is governed by provisions of Delhi Co-operative Societies Act which specifically debars the plaintiff from

becoming member in the Co-operative Society or acquiring any possessory rights or interest in the suit property without explicit permission of the society.

18. It is submitted that the proposed amendments should not be allowed since the same are not necessary for determination of real question in controversy which is whether the plaintiff, claiming himself to be the 50% owner of the suit property is entitled to have his portion separated by metes and bounds vide a decree of partition. It is submitted that a suit for partition presumes that a person seeking partition has a clear title however in the present case, by proposed amendments the plaintiff himself admits that till date he does not have any title to the suit property and seeks declaration in respect thereof.

19. The perpetual sub lease being granted by the Co-operative Society, the suit property vests in Co-operative Society, the provisions of Delhi Co-operative Societies Act and corresponding rules cannot be subject to any challenge in suit for partition filed on the basis of title.

20. The defendant has refuted all the other averments of the plaintiff made in his application. Learned counsel for the defendant has raised large number of objections by referring the judgments in support of the case of the defendant. Infact the submissions made by the counsel for the defendant are mainly on the merit of the case.

21. It appears to the Court that the defendant is strongly opposing the prayer made in the applications despite of settled law that while

considering the application for amendment; the Court has not to consider the case of merit. Even if a party has a weak case on merit and amendments which are necessary to go into the root of the case, and to decide real controversy between the parties, the prayer of amendment can be allowed unless by such amendments would change the cause of action and the nature of case or the same are dishonest and a great prejudice would be caused to the other party whose case is displaced by way of amendment. The merit or demerit is not to be decided at the stage of deciding the application for amendment.

22. It is also submitted by the learned counsel appearing on behalf of the defendant that the plaintiff is seeking to be declared with more perfect title than the defendant herself who is holding the suit property as a sub-lessee in her capacity as a member/shareholder of Panchshila Cooperative House Building Society Ltd. and herself is not entitled to a declaration of title against the said Society or the DDA. Thus, her brother could not enter into an agreement with the plaintiff and Suneet Seth. As regard to the above said objection is concerned, this Court is of the view that the same cannot be decided at this stage as defendant has already raised the said objection in the original written statement, the same would have to be determined after trial.

23. Now I shall consider the application for amendment of plaint. It is settled law that while considering the application for amendment the Courts have very wide discretion in the matter of amendment of

pleadings but Court's power must be exercised judiciously and with great care. While deciding applications for amendments the Courts must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide, worthless and/or dishonest amendments. The first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the Courts' discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side.

24. As per law, ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any Court grants actual costs to the opposite side and basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are: (i) whether the amendment sought is imperative for proper and effective adjudication of the case; (ii) whether the application for amendment is bonafide or malafide; (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation; (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case.

25. As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. The above are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17 CPC. These are only illustrative and not exhaustive.

26. The Supreme Court in the case of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others***, reported in (2006) 4 Supreme Court Cases 385 held as under:

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be

adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

27. Having examined the replies filed by the defendant and decision referred and submission made by the counsel it appears that the main objection *inter alia* taken by the defendant is that by virtue of amendment, the nature of declaration sought by the plaintiff is barred by limitation under Article 58 of Limitation Act, 1973 and in the garb of amendment, the plaintiff is trying to get the decree of Specific Performance of the agreement entered between the plaintiff Sunil Seth and her brother Prem Kumar Dewan.

28. This Court is of the opinion that if the amendments are necessary for the purpose of determining real questions in controversy and do not change the nature of the suit and would not cause any prejudice to the otherside, the same are liable to be allowed. Merit or demerits of the case are not to be examined at this stage of deciding the application. The same are even cannot be gone into at this stage because of the reason, the chance is always given to the other side to rebut the same. In the present case, counsel for the defendant has argued at great length and referred large number of decisions in order to try to establish that the suit itself is not maintainable, however, it is also settled law that it is immaterial that even if a party has a weak case, still at the stage of dealing the application for amendment, the strength of the case is not to be kept in mind. Therefore, if the amendment are necessary in order to decide the real controversy, the same can be allowed. Merely delay

in making the application is not a sole ground for refusal of amendment. Court at this stage cannot go into truth and falsity and maintainability of the suit. Amendment sought does not make out new case or new cause of action and facts remain to be same and in substance do not introduce new material fact.

29. With regard to other two objections, it is necessary to reproduce the prayer made in the earlier amended plaint which was already allowed by order dated 6th August, 2013 replacing the original plaint and the proposed prayer mentioned in the amendment application:

Prayer of last amended plaint

- a) Appoint a local commissioner to partition the suit property bearing No.N-47, Panchsheel Park, New Delhi by metes and bounds and to put the parties to the suit in possession of their respective portions, as may be determined at the time;
- a-1) That the plaintiff be granted a preliminary decree for partition fixing the shares of the parties in the property in suit and thereafter grant a final decree for partition in favour of the plaintiff and against the defendant by partitioning the property by metes and bounds or any other mode that this Hon'ble Court deems fit in the facts and circumstances of the case.
- b) Direct the defendant to render true and correct statement of account, with respect to the rentals received from the tenant(s) in the suit property and any other income(s) generated there from;

- c) Direct the defendant and/or any other persons found necessary to do so, to tender/pay the receivables, damages, mesne profits and user charges inter-alia for the unauthorized use and occupation of certain portions of suit property;
- d) Grant such other and/or further relief(s) as may be deemed fit, expedient and/or appropriate in the facts and circumstances of this case including the costs of these proceedings in favour of the plaintiffs and against the defendant.

Prayer in the proposed amendment of plaint.

- a) Appoint a local commissioner to partition the suit property bearing No.N-47, Panchsheel Park, New Delhi by metes and bounds and to put the parties to the suit in possession of their respective portions, as may be determined at the time;
- a-1) pass a decree of declaration and consequential relief of mandatory injunction in favour of the plaintiff and against the defendants declaring that the plaintiff is entitled to be substituted as co-owner/co-sharer in place of the defendant No.3 in respect of the one half share of the suit property and directing the defendant No.2 to carry out and/or cause to be carried out necessary substitution in the relevant record of the DDA and the Society in general perpetual sub lease in particular.
- a-2) pass a decree of mandatory injunction in favour of the plaintiff and against the defendant Nos.1 to 3 directing them to execute all necessary documents to facilitate conversion of the suit property from lease hold to free hold as per the applicable policy

so as to pave way for registration of the Sale Deed in favour of the plaintiff.

- a-3) That the plaintiff be granted a preliminary decree for partition fixing the shares of the parties in the property in suit and thereafter grant a final decree for partition in favour of the plaintiff and against the defendant No.1 by partitioning the property by metes and bounds or any other mode that this Hon'ble Court deems fit in the facts and circumstances of the case.
- b) Direct the defendant No.1 to render true and correct statement of account, with respect to the rentals received from the tenant(s) in the suit property and any other income(s) generated there from;
- c) Direct the defendant No.1 and/or any other persons found necessary to do so, to tender/pay the receivables, damages, mesne profits and user charges inter-alia for the unauthorized use and occupation of certain portions of suit property;
- d) Grant such other and/or further relief(s) as may be deemed fit, expedient and/or appropriate in the facts and circumstances of this case including the costs of these proceedings in favour of the plaintiffs and against the defendant No.1.

30. It is evident that the additional prayer for declaration and mandatory injunction are flowing from the facts and averments already made in the original plaint and subsequent events happened between the parties. As regard to the other objection of the defendant that by virtue of amendment, the plaintiff is trying to get the decree of specific performance of agreement, no such relief is sought by the plaintiff in the prayer clause.

31. It is held in the case of ***Abdul Rehman and another vs. Mohd. Ruldu and others***, reported in (2012) 11 Supreme Court Cases 341 that an amendment seeking declaration of title shall not prejudice the case of the other side unless the reliefs claimed are not barred by limitation. It was observed in the case referred that no prejudice would be caused to the respondents if amendments were allowed. In order to avoid further litigation, the same should be allowed as all amendment which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

32. In view of the aforesaid exhaustive discussion and the averment made in the application, this Court is of the opinion that the amendments proposed by the plaintiff are necessary to determine the real controversy between the parties as the merit of the case is not to be discussed at this stage.

33. With regard to the application under Order 1 Rule 10 CPC is concerned, the provision of Order I Rule 10(2) CPC is reproduced herein below for better appreciation:-

“(2) Court may strike out or add parties – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any

party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

34. From a perusal of the aforesaid provision, wide discretion has been conferred on the Courts to decide as to whether to strike off the name of any party, who has been improperly joined either as plaintiff or defendant in a suit, or to include the name of any person, whose presence is found to be necessary for effective and complete adjudication and settlement of all the questions involved in the suit.

35. While discussing the general rule with respect to impleadment of parties in a suit, the Supreme Court had made the following pertinent observations in the case of ***Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.*** reported as (2010) 7 SCC 417:-

“8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure (“Code” for short), which provides for impleadment of proper or necessary parties.

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The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance." (emphasis added)

36. When the present case/matter was fixed for framing of issues before Court on 5th May, 2014, this Court permitted the parties to file original documents. The counsel for the defendant contended that the property in suit originally belonged to Late Shri Jagan Gopal Dewan by way of the perpetual Lease Deed given by the DDA and various questions would arise regarding the validity of the sale done by the brother of the defendant, Prem Kumar Dewan in favour of the plaintiff

in the year 2008 and a reference was also made to terms and conditions in Perpetual Sub-Lease Deed given by DDA and also the applicability of Government Grants Act. This Court observed that DDA is not only a necessary party but is also a proper party and thus, DDA was impleaded as the defendant No.2.

37. Therefore, considering the overall facts and circumstances in the present case and in order to avoid multiplicity of the proceedings and to save the time of Court and costs of the parties, the prayer made in both applications are allowed. The amended memo of parties be filed by the plaintiff within two weeks from today. Amended written statement be filed within 4 weeks. Replication, if any, be filed within 4 weeks thereafter.

38. The applications are accordingly allowed. No costs.

CS(OS) No.149/2011

List the matter before the Roster Bench on 14th July, 2015 for further proceedings, subject to orders of Hon'ble the Chief Justice.

**(MANMOHAN SINGH)
JUDGE**

MARCH 10, 2015