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

+ **FAO(OS) 213/2017 & CM APPL. 25283/2017**

SABINA SULTANA & ORS

..... Appellants

Through: Mr.Aly Mirza, Advocate.

versus

AHMAD AZIZ & ORS

..... Respondents

Through: Mr. Arvind Bhatt and Mr. Kuber Giri,
Advocates for R-1 with R-1 in person.
Ms. Renuka Arora and Ms. Nikita
Salwan, Advocates for D-2/DSI IDC.
Mr. Yashpal Singh, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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17.09.2018

The plaintiffs/appellants are aggrieved by an order declining to entertain an application for amendment of the suit (under Order VI Rule 17 CPC). The learned Single Judge noticed that even though the issues were framed, an amendment application was *per se* not barred, it proceeded to reject on the ground that the plaintiffs had not justified the reason for approaching the Court late.

Mr. Mirza, learned counsel for the appellants stated that amendment sought was merely to dilate the allegations with respect to the serious illness of the parties' mother suffered from at the stage when the Hiba-bil-Ewaz/Sale deed dated 26.06.2009 was executed. He also endeavoured to point out that the consideration for sale was

grossly inadequate.

The Court has considered the submissions and has had benefit of the suit record. By an order dated 19.03.2015, as many as sixteen issues were framed. The issue pertaining to gift-cum-Sale Deed, was a specific one (Issue No.6) and the Court framed issues in such a manner as to flash the onus upon the plaintiff to prove that the sale was obtained by fraud and liable to be declined (ineffective). In the opinion of the Court, this issue is sufficiently wide and encompasses additional pleadings sought to be amended.

In other words, it is open for the plaintiff to lead necessary evidence to substantiate or establish their allegations in support of issue no.1. Any legal issue which does not require further evidence but can otherwise be urged having regard to the nature of issues framed, are also open to it to be led.

The appeal is disposed of in above terms. Pending application stands disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 17, 2018

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