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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1117/2018, CM APPL.38114/2018

RAMESH CHANDER & ANR

..... Petitioners

Through:

versus

ADARSH ADIVASI MEENA SAMAJ (REGD) DELHI & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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04.12.2018

The present suit was filed in the year 2005 for possession and permanent injunction. On 14th July, 2016 the plaintiff filed an application for amendment of the plaint so as to implead the relief qua cancellation of Will purportedly executed by Baba Jamuna Dass in favour of respondent No.1. It is the case of the petitioners that they are owners of the subject property and that Baba Jamuna Dass who was only a licensee could not have executed any Will in favour of any third party, hence it be cancelled.

Nevertheless Order 6 Rule 17 CPC says no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

It is an admitted case the plaintiff was aware of the said alleged

Will prior to institution of suit and in any case after the written statement was filed in 2005 by respondent No.1. It is not denied the suit is now at the stage of defendant's evidence, and the petitioner failed to file application in time despite being aware of such Will, hence, there is no ground to set aside the order dated 28.08.2018. The petition stands dismissed.

YOGESH KHANNA, J.

DECEMBER 04, 2018

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