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

*Date of Decision: 30<sup>th</sup> January, 2020*

+ **CM (M) 1744/2019 and CM APPLs. 52529/2019, 805/2020, 2187/2020**

DAYANAND (NOW DECEASED) THR HIS LRS ..... Petitioners  
Through: Mr. Anand Duggal, Mr. B.A. Shah  
and Mr. Dinesh Gosain, Advocates  
(M: 9654933075).

versus

OM WATI & ORS. .... Respondents  
Through: Mr. Israel Ali, Advocate (M:  
9818317049).

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. CM APPL. 2187/2020 is an application seeking recall of the order dated 10<sup>th</sup> January, 2020, by which the written statement filed by the legal heirs of the Petitioner was directed to be taken on record.
2. There are various allegations made by the counsels against each other in respect of the intimation which was to be given as per order dated 6<sup>th</sup> December 2019 and service of the application considered on 10<sup>th</sup> January 2020. Since these are personal allegations inter-se counsels, the same are not being considered and the matter is being heard on merits.
3. The background is that a suit for permanent injunction was filed by Respondent No.1/Plaintiff - Ms. Om Wati (*hereinafter*, "*Plaintiff*") against the Petitioner/Defendant (*hereinafter*, "*Defendant*") - Mr. Dayanand. Initially, the prayer was for permanent injunction in the following terms: -

*"It is, therefore, prayed that the Hon'ble Court may be*

*pleased to pass a decree for permanent injunction favour of the plaintiff and against the defendant, restraining the defendant, his associates and agents etc. permanently from transferring, alienating and disposing of or subletting part of whole of the suit premises being part of the buy the house No. 85, Kumaronwali Gali, Badarpur Delhi as one room on its first floor, which is shown in red colour in the attached site plan without due process of law. Cost of the suit may also kindly be awarded to the plaintiff as against the defendant. Any other relief which the Hon'ble Court deems fit and proper in the interest of justice and aforesaid said facts and circumstances of this case may kindly be granted to the Plaintiff."*

4. The suit continues to remain pending though evidence has commenced. In the meantime, since some part of the suit property was alleged to have been taken possession of, by the Defendant, the Plaintiff filed an application under Order VI Rule 17 CPC, seeking to add the relief of possession to the plaint. In the said application, paragraphs 10, 11, 13A, 15 and the prayer clause were sought to be amended/added. The said application was allowed on 11<sup>th</sup> December, 2014.

5. Thereafter, the Defendant wanted to file an amended written statement. The said written statement is the subject matter of the present controversy. According to the Plaintiff, the written statement that was filed by the LRs of the Defendant sought to add/modify various averments in the original written statement, which, according to the Plaintiff, was impermissible. The Plaintiff moved an application seeking rejection of the amended written statement. This application was allowed by the Trial Court vide the impugned order dated 21<sup>st</sup> September, 2019. The Trial Court

observed that the amended written statement goes beyond the amendments which were made in the application under Order VI Rule 17 CPC and such a fresh written statement, which seeks to resile from various averments made by the deceased predecessor-in-interest, cannot be permitted. The observations of the Trial Court are as under: -

*“Vide this order I shall decide the application U/s 151 CPC moved by the plaintiff on 11.04.2016 seeking rejection of the WS filed by LR of the defendants. Reply to the said application was filed on 26.04.2016.*

*I have heard the arguments and perused the record.*

*Through the present application plaintiff has sought rejection of the written statement to the amended plaint filed on 05.10.2015 on the ground that a fresh written statement has been filed instead of replying only to the amended paragraphs of the plaint. By filing a fresh written statement, defendants have withdrawn the admissions on record and have also taken new stands. Ld. Counsel for plaintiff has vehemently argued for the rejection of the WS.*

*On the other hand Ld., Counsel for defendant has argued that there is no change in the nature of suit. He has further argued that no new defence has been taken and neither any change has been made in the previous written statement. However, he has fairly conceded that changes have been made. Ld. Counsel has further argued that since the LRs of the defendants are filing the written statement, therefore, they have right to file a fresh written statement.*

*Admittedly changes have been made in the written statement. These changes are limited to the amended paragraphs of the plaint. Hence, the question to be decided is whether the LRs of the defendant can file independent written statement or they should have stuck with the written statement of the predecessor in interest and only file the amended written statement with respect to the amended paragraphs of the plaint.*

*This court is of the considered opinion that when a legal representative of a party is impleaded in a suit, that fact by itself, does not given an independent right to the LR to file the written statement independently. In the case titled as **Raj Prakash Decd. Thr. LR's v. Jai Prakash Thr. LR's**, 2012 SCC OnLine Del 2303, the Hon'ble Delhi High Court, in somewhat similar situation, dismissed the appeal of the petitioner/ legal representative of the sole defendant on the ground that the petitioner being impleaded in the capacity as legal representatives on an application U/o. XXII Rule 4 CPC and have not been impleaded on any independent right, title or interest in the property, does not have right to file independent written statement. Further, the Hon'ble Delhi High Court also referred to judgment of the Hon'ble Supreme Court reported in **AIR 1995 SC 1653 Vidyawati vs. Manmohan**, in which the Hon'ble Apex Court noted that if the legal representatives were to set up any independent right, title or interest in the property, they have to be impleaded as a party in their own right for which application has to be filed u/o. I Rule 10 CPC.*

*In the present case, the LRs of the defendant were impleaded on an application U/o. XXII Rule 4 CPC vide order dated 17.07.2012. Hence, their right is limited only to the defence being available to them which is appropriate to their character as legal representative of deceased defendant.*

*Accordingly on the basis of aforesaid observations I hold that LRs of the defendant cannot file an independent written statement and should have filed amended written statement replying only to the amended paragraphs of the plaint, rest of the written statement being same.*

**Accordingly application U/s 151 CPC stands allowed.** Written statement filed by the LRs of the defendant stands rejected. Defendants are directed to file the amended written statement in view of the

*aforesaid observation. Put up for filing of amended WS on 13.11.2019.”*

6. Ld. counsel for the Defendant submits that the amendment(s) introduced by the Plaintiff through the application under Order VI Rule 17 CPC expanded the scope of the suit and hence, the amended written statement was permissible and could not have been rejected. On the other hand, ld. counsel for the Plaintiff submits that the entire written statement has been modified.

7. The Court has heard ld. counsel for the parties and has perused the documents as well as the various applications on record. A perusal of the amended written statement filed by the legal heirs of the Defendant shows that there are several changes which have been carried out in the written statement i.e., in paragraphs 1- 4, 6 - 9 etc. Keeping in mind the fact that in the application under Order VI Rule 17 CPC only paragraphs 10, 11, 13A, 15 and the relief were sought to be amended, detailed amendments to the entire written statement would not be permissible.

8. Without going into the question as to what is the area for which possession was sought, since the amendment has been allowed and that is not the subject matter of this petition, the Defendant is directed to file a fresh written statement within a period of ten days from today, restricting the amendments only to paragraphs 10, 11, 13 and the paragraphs on valuation/relief. No further amendment shall be permitted. Even in respect of these paragraphs, the amendments should be restricted to the question as to whether possession has been taken over by the Defendant and the allegations made in paragraphs 10 and 11.

9. The Trial Court shall examine the amended written statement and

ensure that the same is strictly in terms of the directions given above. No further amendment shall be carried out. If the Trial Court finds that the written statement amends the written statement beyond paragraphs 10,11, 13 and the paragraph on valuation/relief, the written statement shall not be taken on record. The trial in the suit shall continue. No further opportunity for filing the amended written statement shall then be granted to the Defendant.

10. Considering the fact that the suit is more than 20 years old, trial shall be concluded on or before 30<sup>th</sup> April, 2020. The next date before the Court, i.e., 14<sup>th</sup> April, 2020 is cancelled.

11. The petition and all pending applications are disposed of in the above terms. *Dasti*.

**PRATHIBA M. SINGH**  
**JUDGE**

**JANUARY 30, 2020**  
**MR**