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

Date of decision: 10th December, 2021

+ **C.R.P. 94/2021 & CM APPLs. 44541/2021 & 44542/2021**

HARI RAM

..... Petitioner

Through: Mr. Santosh Kumar Sahu and Mr.
Kanhaiya Kumar, Advocates

versus

LEKHI RAM

..... Respondent

Through: None

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM APPL. 44542/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CRP 94/2021 & CM APPL. 44541/2021 (for stay)

3. The Petitioner/Defendant (*hereinafter "Defendant"*) assails the order dated 9th September, 2021, passed by the ADJ, South West Dwarka, New Delhi (*hereinafter "Trial Court"*) in *CS No. 10291/2016* titled *Lekhi Ram v. Hari Ram*. Vide the said order, an application under Order VI Rule 17 CPC seeking amendment in the original plaint filed by the Plaintiff/Respondent (*hereinafter "Plaintiff"*), has been allowed by the Trial Court, subject to cost of Rs. 20,000/- to be deposited by the Plaintiff. The observations of the Trial Court are as under:

“1. Vide this order Application under O.6 R. 17 CPC is being disposed.

Plaintiff is seeking incorporation of Property bearing No.165B Masjid Moth for Partition in the suit which was only for property No.180 Masjid Moth. Correction in the no. of 180 Masjid Moth is also prayed as 180 B.

Plaintiff had filed before Hon'ble High court this suit for partition of property bearing no. 180 Masjid Moth and it was registered on 2.3.2015, Subsequently, it was transferred to the district court on enhancement of pecuniary jurisdiction. Issues were framed on 03.02.2017. Additional issue as to limitation was also framed on 22.12.2017. A suit was filed earlier by the Plaintiff for permanent injunction in the year 2003 which was disposed on 22.08.2003 on preliminary issue with liberty to seek efficacious remedy. Plaintiff did not lead any evidence in the suit for partition and sought withdrawal of the suit on 15.09.2018 with liberty to file fresh suit for incorporating all the ancestral property which was opposed and thereafter Plaintiff filed the application for amendment for incorporating the property 180 B on 27.03.2019 and as it was not clarifying various changes made in different paras, fresh application highlighting the changes in different paras was later filed. Reply was filed raising contention of limitation, bar of O.2 R. 2 CPC, contradiction in the stand of Plaintiff qua the complaint dt. 06.04.2003 regarding partition of property no. 180 B.

1. Proposed incorporation in Para 1 of the plea of raising of construction of second and third floor with joint funds being inconsistent with the stand of existing plea in the original plea as to contribution for raising construction being jointly for third floor only, was also raised.

Further incorporation was sought in para 1 of the plea as to construction on second floor and third floor by stating that

it was inadvertently left out and incorporation of revised site was accordingly sought. It was also opposed on the ground of inconsistency and contradiction.

2. *It was contended that the main intention is to create pressure and blackmail defendant for making him succumb to the illegal demand of Plaintiff and that this is third round of litigation. Counsel for the Plaintiff on the other hand argued that this is the only suit for Partition which was filed after withdrawal in 2014 of the suit for partition on the ground of pecuniary jurisdiction and the earlier suit in 2003 was for injunction only which was disposed in 2003 itself with liberty to seek efficacious remedy. It was argued by the counsel for Plaintiff that Plaintiff is not well educated and could not inform the earlier counsel to incorporate all the properties for partition and only recently disclosed about another property to him and hence the application was filed seeking incorporation of the same and making other necessary changes for clarification and depicting correct picture.*

3. *From perusal of the record and respective pleas, it is clear that this is the only suit for partition filed in 2015 and pending after withdrawal of suit for partition filed in 2014 on the ground of pecuniary jurisdiction. The other suit filed in the year 2003 was for injunction only and was disposed in the year 2003 itself on preliminary issue with liberty to plaintiff to seek efficacious remedy. All the contentions being raised will be a matter of trial and nothing as to correctness or falsity of the same could be said without trial. Therefore, it is not proper to reflect on the same. Perusal of the record shows that the present counsel for the Plaintiff had filed vakalatnama on 6.10.2017 when application u/o 14 r. 5 CPC was pending and on his no objection, on the next date additional issue for limitation was framed and case was adjourned for 20.03.2018 for Plaintiff's evidence and matter was referred to mediation also but it returned unsettled. Thereafter on the third date i.e. 15.09.2018 withdrawal of the*

present suit with liberty to file afresh for incorporating other property as noted above was filed. In view of aforesaid discussion and the nature of suit being of partition, it will be imperative to adjudicate the issues by permitting amendment without prejudice to the contentions of defendant all contentions including contention as to limitation, O.2 R. 2 CPC which essentially will be mixed question of fact and law. Other aspect of inconsistency and contradiction being pointed out by making reference to earlier complaint will also be matter of trial. The aspect of inadvertent non reference as to contribution in respect of second floor also along with third floor, and filing of revised site plan will again be points of adjudication in trial and prejudging anything in this regard will not be proper. Endeavour in a suit for partition should be for adjudicating the issues on merits and in view of factual details, it will not be proper to reflect and opine on the said aspect without trial, but on account of delay and alleged harassment, Plaintiff is liable for cost. Application under O. 6 R. 17 CPC is accordingly allowed and amended plaint is taken on record subject to payment of cost of Rs.20,000 (Rs. Twenty thousands)."

4. The grievance of the learned counsel for the Defendant, is that in the earlier round of litigation between the parties, the Plaintiff had filed a suit bearing **CS No.347/2014** titled **Lekhi Ram v. Hari Ram** praying for partition and permanent injunction against the Defendant in respect of suit property bearing no. 180, Masjid Moth, New Delhi-49, which was later withdrawn with liberty to avail equally efficacious remedy available under the law and file on the same on the same cause of action, vide order dated 26 November, 2014. Pursuant to this, the present suit being **CS No. 10291/2016** was filed. However, the plaint in this suit was now amended to include another property. Thus, he submits that addition of another property i.e., property bearing no.165B, Masjid Moth Village, New Delhi apart from the original

suit property bearing no.180B, Masjid Moth Village, by way of an amendment to the original plaint using Order VI Rule 17 CPC could not have been done as the fresh suit was to be filed on the same cause of action.

5. Ld. counsel further submits that the Plaintiff had already admitted before the police authorities, that there was an oral partition during the lifetime of the parents. Thus, in view of this admission, the Plaintiff ought not to be allowed to file a fresh suit either for partition or amend the existing suit to include a second property.

6. Heard. A perusal of the impugned order shows that the Trial Court has allowed the amendment under challenge on the ground that the issues being raised by the Defendant cannot be considered at the stage of amendment but at a later stage once the issues are framed and the evidence is led as all the contentions raised by the Defendant are a matter of trial. Further, in so far as the question of Order II Rule 2 CPC is concerned, the Trial Court has observed that it is a mixed question of fact and law and the allowing of the amendment is without prejudice to this objection.

7. Thus, the Trial Court has allowed the amendment application on the ground that it cannot pre-judge the merits of the amendments as such, which would be considered at a later stage.

8. After hearing counsel for the Defendant, it is clear that the nature of the objections which are sought to be raised are:-

- (i) Prayer for partition *qua* the second property having not being sought in the first suit which was filed by the Plaintiff, the same would be barred. This in the opinion of this Court would be an objection under Order II Rule 2 CPC, for which the Defendant is free to move an application seeking rejection.

- (ii) In so far as the admission before the police authorities which is relied upon by the Defendant where the Plaintiff is stated to have mentioned about the oral partition which was effected between the parties during the lifetime of the parents, if the said document is an admitted document the Defendant is free to move an application before the Trial Court under Order XII Rule 6 CPC, which would be decided in accordance with law.
- (iii) If the Defendant has any other objections as to the maintainability of the suit, in view of the earlier litigation which was filed, the Defendant is also free to move any other appropriate application.

9. Notably, the scope of the present petition is only in respect of an application under Order VI Rule 17 CPC for an amendment which has been allowed by the Trial Court. This Court is of the opinion that the substantive merits of the amendment cannot be gone into in an application under Order VI Rule 17 CPC. All the defences of the Defendant would be left open to be raised in the amended written statement, which is to be filed by the Defendant. The Defendant is free to take all objections on merits *qua* the amendments which have been made by the Plaintiff and the same shall be considered in accordance with law, by the Trial Court.

10. In these circumstances, the impugned order does not warrant any interference. The Plaintiff shall pay the costs of Rs. 20,000/- imposed by the Trial Court within a period of two weeks. Subject to such payment, the Defendant shall also file its amended written statement within 30 days from today and both the amended plaint of the Plaintiff and the amended written statement of the Defendant shall be taken on record, unless there is any

order to the contrary already passed by the trial court.

11. The Defendant is also free to move an application in the Trial Court, in respect of the objections which have been canvassed before this Court as recorded above. Any observation in the Trial Court's order in respect of the said objections under Order II Rule 2 CPC or the maintainability of the suit would not bind the adjudication of the application, if moved by the Defendant, which shall be decided in accordance with law.

12. The petition is disposed of in these terms. The pending application is also disposed of.

13. Let a copy of this order be sent to Court of Ld. ADJ, South West, Dwarka Courts, New Delhi for **CS No. 10291/2016** titled ***Lekhi Ram v. Hari Ram.***

PRATHIBA M. SINGH
JUDGE

DECEMBER 10, 2021

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