



A.No.4805 of 2024 in T.O.S No.14 of 2021

WEB COPY **A.A.NAKKIRAN, J**

This application has been filed by the applicant/plaintiff to permit him to amend the original petition and the affidavit of assets as mentioned in the schedule of amendments.

2. Heard both sides.

3. The learned counsel for the applicants submitted that since the present original petition is ripe for trial, the original documents were perused and only upon verifying with the original documents followed by an inspection of court records, it was recently found that the property incorporated in S.No.3 of the schedule to the main O.P (situated in Ooty) did not belong to the deceased testator and that the details of the said property incorporated in the main original petition differs from one originally owned by the deceased testator during his lifetime. The details of the actual property owned by the deceased in Ooty is as follows

"Property situated in R.S No.2250 for an extent of 0.00-14/16 Acres, along with a building bearing Door No.292, Main



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*Bazaar, Ward No.X in Ootacamund Village & Municipality
and in the Sub Registration District of Ootacamund,
Registration District of Coimbatore.*

He further submitted that the inclusion of a different property in the original petition and Affidavit of Assets has been an inadvertent error and on account of both the properties being situated in Ooty, the said error was left unnoticed until recently. Moreover, the number of shares of Xpro India Ltd., was also wrongly entered as 50 shares instead of 9 shares. Since the property forms part of the large estate of the deceased testator, it is necessary that the unintentional errors are rectified and the actual property owned by the testator is made part of the present original petition, failing which it would be difficult to administer the said property by the beneficiary and would cause grave prejudice. The aforesaid error and omission was neither willful nor wanton but was only on account of the aforesaid bonafide reasons. Since the question of title of the property is alien to the probate proceedings, no prejudice will be caused to the respondent, if the present application is allowed to amend the the original petition and the affidavit of assets. Hence, he prays to allow this application.



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4. The learned counsel for the respondent submitted that the reasons cited by the applicant for the present amendment such as alleged oversight and inadvertent errors regarding the extent and value of properties and shares are vague, speculative and clearly an afterthought. The purported errors were well within the knowledge of the applicant at the time of the original filing and there is no reasonable or plausible explanation for why they were not addressed earlier. It is not stated as to how despite due diligence, the amendment could not be made prior to commencement of trial. The applicant has been fully aware of the assets for a significant period and has already been afforded ample opportunities to rectify the alleged discrepancies. The amendment application only serves to reinforce the suspicion that the plaintiff seeks to manipulate the judicial process to grab valuable properties of the testator by disinherit his sisters. The errors in the original petition and affidavit of assets are not mere clerical mistakes, they reflect the dishonest conduct and ulterior motives of the plaintiff. If this amendment is allowed, it will cause severe prejudice to the respondent as it would permit the plaintiff to cover up material inaccuracies that could alter the course of the case. Hence, she strongly opposes to allow this application.



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5. Though the respondent/defendant has vehemently opposed to allow this application, considering the facts and circumstances of the case, and in the interest of justice, this Court is inclined to permit the applicant/plaintiff to amend the original petition and affidavit of assets as prayed for in the application, by imposing cost.

6. Accordingly, this application is allowed on condition that the applicant/plaintiff pays a sum of Rs.2,000/- (Rupees Two Thousand only) to the respondent/defendant on or before 19.11.2024. In the event of failure on the part of the applicant in paying the said amount within the stipulated time, this application shall stand dismissed automatically without any further reference to this Court.

7. For filing amended plaint copy, post the matter on 19.11.2024.

11.11.2024

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