



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 298/2024, CM APPL. 60430-60432/2024
LAXMAN DASS & ANR.

.....Petitioners

Through: Appearance not given.

versus

SANDEEP ARORA & ORS.

.....Respondents

Through: Mr. Anurag Bhatt and Mr. Lokesh
Pathak, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

28.10.2024

%

1. A Revision Petition under Section 115 read with Section 151 CPC has been filed to challenge the Order dated 03.06.2024 of the learned ADJ in Review Petition No.58/2024 to review the Order dated 26.02.2024 dismissing the application of the plaintiff under Order VI Rule 17 CPC.
2. *Learned counsel on behalf of the Revisionist/plaintiff* has submitted that he had filed a *Suit for Partition* in response to which the defendants/respondents herein filed the Written Statement in March, 2023, wherein they, for the first time, projected a Will dated 15.07.2022 of Late Shri Raj Kumar. He, therefore, after the filing of the Written Statement sought Amendment of his plaint to challenge this alleged Will. However, his Amendment Application was dismissed vide Order dated 26.02.2024.
3. A Review Application was filed challenging its rejection, but the



Review Application has also been rejected vide Order dated 30.06.2024.

4. It is submitted on **behalf of the Revisionist/Plaintiff** that because he came to know about the Will only from the Written Statement and also from the Status Report that was filed before the learned M.M in the Criminal case on 28.02.2023, the Will could not have been challenged in the plaint which was filed much prior in time. It is submitted that the case is still at the stage of pleadings. On account of the facts which came to his knowledge subsequently, his Amendment Application has been wrongly rejected. Hence, a prayer is made for setting aside the impugned Order and to allow the Amendment Application.

5. Learned counsel for the respondent appeared on advance Notice.

6. A *preliminary objection* has been taken on behalf of the respondent is that by way of present Revision, the challenge has been made only to Order dated 03.06.2024 vide which the Review Application had been dismissed and not seeking Order dated 26.02.2024 vide which the Application under Order VI Rule 17 CPC, had been dismissed. The impugned Order dismissing the Application under Order VI Rule 17 CPC has not been challenged.

7. It is further submitted that the plaintiff was aware of the “Will” since he had made various Complaints to the Police in the year 2022 in regard to the Suit property. Furthermore, he as per his own submissions, came to know about this alleged Will in February, 2023 which is prior to the Written Statement that was filed in March, 2023. However, the Revisionist waited till the filing of the Written Statement to seek amendment of the plaint. The Application has been rightly rejected and there is no merit in the present Revision Petition.



8. **Submissions heard.**

9. In so far as the preliminary objection is concerned, the holistic reading of the entire Revision Petition reflects that it is the rejection of the Amendment Application vide Order dated 26.02.2024, which has been challenged. Hyper technicalities need not be resorted to deny the substantive rights to the parties.

10. The suit for Partition has been filed on behalf of the plaintiff. It is not denied that plaint got filed in October, 2022. The Will surfaced for the first time in the Status Report that was submitted by the I.O in a Complaint Case before the learned M.M, on 22.02.2023. It is evident that the plaintiff was not aware of the existence of this Will till February, 2023. It is not denied that the Complaints were being filed by the plaintiff in respect of the suit properties, but in none of these complaint was there any reference to the Will. The plaintiff, therefore, was justified in seeking the amendment of his plaint to challenge the validity of the Will which was projected in the Written Statement by the respondents, in view of having come to know about it subsequent to filing of his Plaint.

11. The only grievance is that though the plaintiff came to know about the Will in February, 2022, but the Application has been filed for amendment after the filing of the Written Statement. Pertinently, this cannot be a ground to deny the Amendment Application which got filed soon after the Written Statement. The validity of the projected “Will” by the defendant is a question of significance and relevance in deciding the Suit for Partition. Pertinently, the suit is still at the stage of completion of pleadings.

12. The impugned Order dated 26.02.2024 dismissing the amendment Application under Order VI Rule 17 CPC, is hereby set aside and the



Application under Order VI Rule 17 is allowed.

13. The Amended Complaint be filed within thirty days of this Order.

14. The Petition is accordingly disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 28, 2024/va