



A.No.5730 of 2024 in TOS.No.20 of 2023

A.A.NAKKIRAN, J.

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This application has been filed to permit the applicant to amend the paragraph Nos.3, 4, 17 and 18 of the written statement by incorporating the correct door number as 60 instead of 66, date of death of Govinda Achary as 11.02.1977 instead of 10.02.1977 and the alleged date of Will executed by Govinda Achary as 10.09.1976 instead of 10.09.1977.

2. Heard both sides.

3. Learned counsel for the applicant has submitted that the paragraph Nos.3, 4, 17 and 18 of the written statement be suitably amended by incorporating the correct door number of the property, date of birth of the applicant's father and the alleged date of Will executed by her father. He further submitted that inspite of due diligence, the amendment petition could not be filed earlier. If this application is not allowed, she would be put to irreparable loss and hardship. Hence, he prays to allow this application.

4. Learned counsel for the respondent has submitted that the proviso to Order 6 Rule 17 CPC has total bar that prevented any application for amendment after trial had commenced unless court concludes that inspite of due diligence, the party could not have raised the matter before the commencement of trial. The said proviso curtails absolute discretion to allow



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amendment at any stage and its object is to prevent frivolous applications that are filed to delay the trial. He further submitted that they reflect lack of due diligence and knowledge of the petitioner on any issue. The petitioner does not even know the date of death of his father. He further submitted that the respondent is a senior citizen and this application is filed only with an ulterior motive to drag the part heard matter. Hence, he has strongly opposed to allow this application.

5. Considering the facts and circumstances of the case and being satisfied with the reasons stated in the affidavit and taking note that no prejudice would be caused to the respondent, if this application is allowed and in the interest of justice, this application is allowed on payment of cost of Rs.1,000/- (Rupees One Thousand only) to the learned counsel for the respondent.

6. The learned counsel for the applicant has paid the cost of Rs.1,000/- (Rupees One Thousand only) to the learned counsel for the respondent today itself.

7. Registry is directed to list the matter before the learned Additional Master for recording evidence on 04.02.2025.

gv

27.01.2025