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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 208/2025 & CM APPL. 6385/2025 (EXEMPTION) & CM
APPL. 6386/2025 STAY

MANOHAR LAL BANSIWAL AND ANR.Petitioners

Through: Mr. Vipin Nandwani, Mr. Gagan
Talwar and Mr. Tushar Bansiwali,
Advts.

versus

GYAN CHAND BANSIWALRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
03.02.2025

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1. Petitioner is the plaintiff in the suit filed by him for injunction against the respondent.
2. Respondent filed joint written statement alleging that petitioner was not the son of late Sh. Kalu Ram Bansiwali and further that late Sh. Sohan Lal was the owner of the suit property and after his death his estate was inherited by his legal heirs who arrived at a settlement amongst themselves which resulted into a consent decree dated 09.05.2001 in a suit for partition, and his son Ashok Kumar Bansiwali became the owner of the suit property who sold the same to Sh. Praveen Kapoor vide sale deed dated 26.10.2005 for Rs.20,000/- and Sh. Praveen Kapoor sold the same to the respondent no.2 Sh. Madhukar Bansiwali for Rs.35,000/- vide sale deed



dated 16.11.2005, and therefore, claimed that petitioner had no right, title and interest in the suit property.

3. On the basis of such averments in the written statement, petitioner filed an application under Order 6 Rule 17 CPC for amendment of the plaint so as to seek the relief of declaration to declare both the sale deeds dated 26.10.2005 and 16.11.2005 as null and void on the ground that the same were manipulated by the respondent in collusion with each other. The said application came to be dismissed by the learned trial court vide order dated 12.01.2023 on the ground that the application seeking such declaration came to be filed after three years of filing of the written statement by the respondent.

4. Learned counsel submits that on the basis of certain documents discovered by the petitioner, an application was filed under Order VI Rule 17 CPC praying as under:-

"(ii) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring that the defendant number 2 has not acquired any right, title and interest in the suit property i.e. 8772, Gali Rahat Ganj, Roshnara Road, Delhi-110007 on the strength of the alleged sale deed dated 16/11/2005; and

(iii) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring that the alleged sale deed dated 16/11/2005 is not binding on the right, title and interest of the plaintiff that he has in the suit property i.e. 8772, Gali Rahat Ganj, Roshnara Road, Delhi. 110007; and

(vi) Plaintiff wishes to amend the title of the suit as follows:

"Suit for permanent injunction and declaration".



5. Admittedly, the suit filed by the petitioner was for simplicitor injunction but by virtue of the amendment application, petitioner sought to include the relief of declaration as well.

6. The trial court dismissed the application stating that the proposed amendments as sought in the application was similar to the amendments which were sought to be incorporated by the petitioner but were declined vide order dated 12.01.2015, and therefore on account of this application under Order VI Rule 17 CPC was partly allowed inasmuch as the amendments qua the documents were permitted but incorporation of prayer para in the amendment was rejected.

7. Prima facie, it appears that amendment sought in the prayer para has the effect of changing the nature of the case.

8. At this stage, learned counsel seeks permission to withdraw the present petition seeking liberty to file separate suit for declaration.

9. The statement made by the learned counsel is taken on record and the petition is dismissed as withdrawn with liberty as prayed.

RAVINDER DUDEJA, J

FEBRUARY 3, 2025/ib