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

+ **FAO(OS) 45/2025 & CM APPL. 30347/2025 (Stay)**

SHASHI KHANNA

.....Appellant

Through: Mr. Sangram Patnaik,
Ms. Swayam Sidha Patnaik,
Mr. Dilshad Ahmed and
Ms. Vanya Sharma, Advocates

versus

**SURESH KAPOOR THROUGH LRS MRS VEENA SURESH
KAPOOR & ORS.**

.....Respondents

Through: Mr. Virender Goswami, Ms.
Soni Singh, Ms. Swati
Goswami, Ms. Parkhi Singh
and Mr. Vedang Upadhayay,
Advocates for R-1(a) to R-1(d)

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

08.10.2025

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1. Through the present Appeal, filed under Section 10 of the Delhi High Court Act, 1966, the Appellant assails the correctness of the Order dated 11.02.2025 [**"Impugned Order"**] passed in IA No. 23113/2014 in CS(OS) 236/2010. By way of the Impugned Order, the learned Single Judge has permitted the Respondents/Plaintiffs herein to amend the plaint in order to seek an additional relief of declaration and addition of pleadings, besides the relief of partition which was originally sought while filing the plaint.

2. The present dispute arises between family members. The



Plaintiffs claims that the property belonged to Smt. Bhoop Devi, who died on 05.06.1969. Upon her demise, the property was inherited by her son, Sh. Beli Ram, who unfortunately passed away on 14.05.1973. Thereafter, the property devolved upon his Class I legal heirs, being his widow, Smt. Gullo Devi, and children, Sh. Harbans Lal Malhotra, Smt. Kamla Kapoor and Smt. Bimla Devi. The Respondent, who is the son of Smt. Kamla Kapoor, filed the underlying suit for partition, claiming 1/9th share in the suit property. **Sh. Shashi Khanna** (“**the Defendant/the Appellant herein**”) is also a grandson of Sh. Beli Ram and Smt. Gullo Devi.

3. The Defendant claims that the property exclusively belongs to him. By virtue of a Civil Court decree, his mother, Smt. Bimla Devi became the exclusive owner of the one-half share of the property in the year 1965. The Defendant further claims that Smt. Gullo Devi w/o Sh. Bedi Ram executed various testamentary documents bequeathing the property in favour of Smt. Bimla Devi. He also asserts that the property was jointly purchased by Smt. Bhoop Devi and Smt. Bimla Devi, his mother.

4. Upon filing of the written statement and disclosure of those documents, the Plaintiffs filed an application seeking permission to amend the plaint so as to incorporate the relief of declaration, which, as already noted, has been allowed.

5. Learned Counsel for the Appellant submits that the application for amendment was filed after more than three years from the date of filing the written statement and therefore, could not have been allowed. He relies upon the judgment of the Hon’ble Supreme Court in **Basavaraj vs. Indira**¹.

6. We have heard the learned Counsel for the parties at length, and

¹ (2024) 3 SCC 705



with their able assistance, perused the paperbook.

7. It is an admitted position that the Plaintiffs, while filing the suit, sought relief of partition of the property. He is not a party either to the Civil Court decree or to the testamentary dispositions claimed by the Defendant. Therefore, he is not required to file a suit under Section 31 of the Specific Relief Act, 1963. He merely needs to seek a declaration that such documents, if any, are not binding on his rights. Once a suit for partition of immovable property has been filed on the basis of intestate succession, the relief of declaration, if any, is inherent therein.

8. The suit is at a preliminary stage, as issues in the suit have not yet been framed. As already observed, though the amendment of the plaint was not necessary, particularly when the relief of declaration was inbuilt in the suit for partition, however, in any case, the application for permission to amend the plaint has already been granted. The Defendant has already been granted liberty by the learned Single Judge for framing a separate and distinct issue on the question of limitation.

9. With reference to the Defendant's argument on limitation, in the judgment of **Basavaraj** (*supra*), the Hon'ble Supreme Court was examining the prayer for amendment when the suit was listed for final arguments. It was held that an amendment can be allowed only if the parties satisfy the requirements of the proviso to Order VI Rule 17 of the Civil Procedure Code, 1908. Therefore, an amendment of pleadings after the trial has commenced can be permitted only after such satisfaction.

10. However, as already noticed, the present suit is at a preliminary stage. In view of the above, no ground to interfere is made out. Hence, the present Appeal is dismissed.



11. Accordingly, the present Appeal, along with pending application(s), if any, is disposed of in the aforesaid terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 8, 2025/rk/rn/va