



2025:DHC:2718



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

Date of Decision: 15.04.2025

+ **C.R.P. 259/2023 & CM APPL. 37647/2024**

ASHOK RANI

.....Petitioner

Through: Mr. Gaurav Kumar, Advocate.

versus

KASHMIRI LAL

.....Respondent

Through: Mr. Sudeep Sudan, Advocate.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 37647/2024 [*Seeking condonation of delay in filing the Reply*]

1. This is an Application filed on behalf of the Respondent seeking condonation of delay of 74 days in filing the accompanying Reply.
2. For the reasons as stated in the Application, the delay is condoned.
3. The Application stands disposed of.

C.R.P. 259/2023

4. The present Petition seeks to challenge an order dated 05.06.2023 passed by the learned ADJ-02, South West, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] filed by the Petitioner (Plaintiff before the learned Trial Court) has been dismissed by the learned Trial Court.

5. It is the grievance of the Petitioner that while deciding the Application



under Order VI Rule 17 of the CPC, the learned Trial Court has in fact decided the objections taken by the Respondent, on merits of the case which is contrary to settled legal principles.

5.1 Learned Counsel for the Petitioner seeks to rely upon the judgment of the Supreme Court in *Sampath Kumar v. Ayyakannu & Anr.*¹ to submit that the merits of the averments sought to be incorporated by way of an application for amendment are not to be adjudicated upon at the stage of decision in the application for amendment.

6. Learned Counsel for the Petitioner submits that there are several other proceedings which are pending before the Court of Additional District Judge, Dwarka Courts, Delhi between the parties including two probate cases being PC No.3/2016 captioned as *Smt. Ashok Rani vs. State and Another*, and PC No.5/2016 captioned as *Kashmiri Lal Purthi vs. State and Anr.*

7. Learned Counsel for the Respondent, on the other hand, contends that since the issue in respect of challenge to the Wills has already been adjudicated upon by the Coordinate Bench of this Court in RFA No.511/2012, this amendment could not be allowed.

7.1 Learned Counsel for the Respondent additionally has made submissions on the merits of the case pending between the parties. He submits that the title of the suit property has already been decided by the learned Trial Court and upheld by this Court. Thus, the amendment sought for cannot be allowed. He further submits that the amendment seeking a prayer that Petitioner be declared as the owner of the suit property cannot be

¹ (2002) 7 SCC 559



allowed.

8. The record reflects that predecessor in interest of the Respondent had filed a suit for partition and injunction before the learned Trial Court which was decreed in his favour, by a Judgement and decree dated 15.09.2012 [hereinafter referred to as “Judgement dated 15.09.2012”].

8.1 The Judgement dated 15.09.2012 was the subject matter of challenge before a Coordinate Bench of this Court in RFA No.511/2012 captioned ***Ashok Rani v. Sheela Devi***. The Coordinate Bench by an order dated 25.07.2019 had confirmed the Judgment dated 15.09.2012 with a modification that the Petitioner (Appellant therein) would not be dispossessed from the suit property bearing no. 51/1130, Som Bazar, Haibut Pura, Najafgarh, New Delhi-110043 [hereinafter referred to as “suit property”] till the probate petition - PC No.5/2016 is decided and until then, is required to maintain *status quo qua* the title and possession of the suit property. The relevant extract of order dated 25.07.2019 passed in ***Ashok Rani*** case is reproduced below:

“9. After some arguments, learned counsel for the appellant submits that keeping in view the changed circumstances, he does not press the appeal on merits, but states that this Court may protect the possession of the appellant, till the probate proceedings initiated at the behest of Shri Kashmiri Lal Pruthi are decided. He submits that since the respondent/plaintiff Ms Sheela Devi has expired and, in case, the Will set up by Shri Kashmiri Lal Pruthi is not proved, the appellant in any event being the only legal heir of Ms. Sheela Devi will become the sole owner of the entire suit property.”

10. Learned counsel for the respondent has no objection to the said prayer made by the learned counsel for the appellant. He, however, prays that the appellant should also be restrained from creating any third party rights or changing the nature of the property in any manner till the probate petitions are decided by the Court...

“11. The appeal is accordingly disposed of by confirming the impugned



judgment and decree with the only modification that the appellant will not be dispossessed from the property till the probate petition initiated by Shri. Kashmiri Lal Pruthi being PC/5/2016 is decided. In the event the probate petition filed by Shri. Kashmiri Lal Pruthi is decided, the appellant will be liable to handover vacant possession of 50% of the suit property in terms of the impugned judgment and decree. The appellant is, however, directed to maintain status quo qua the title and possession of the suit property, till the decision of the pending probate petition initiated by Shri. Kashmiri Lal Pruthi.

[Emphasis Supplied]

8.2 It is further submitted by the Petitioner that by an order dated 12.10.2022, passed in an application seeking modification of the order dated 25.07.2019, the Coordinate Bench of this Court in **Ashok Rani** case has directed as follows:

“2. Learned counsel for the appellant submits that the appeal was disposed of by this Court by directing that the appellant will not be dispossessed from the subject premises till the disposal of the probate case being PC 5/2016. He submits that the said probate case is, however required to be decided with another pending probate case being PC 3/2016 and therefore, prays that it may be clarified that on the date of the disposal of the present appeal, another probate case was pending adjudication between the parties.

3. In my considered view, once the factum of the pendency of the probate case being PC 3/2016 on 25.07.2019, when the appeal was decided, is a matter of record, no clarification of the decision would be required as both the pending probate cases being PC 3/2016 and PC 5/2016, would be required to be adjudicated in accordance with law.”

[Emphasis Supplied]

9. As stated above, the Coordinate Bench of this Court by its order dated 25.07.2019 read with order dated 12.10.2022 had directed that the Petitioner shall maintain *status quo* qua the title and possession of the suit property till the probate case no. 3/2016 and 5/2016 are decided. The orders passed by the Coordinate Bench dated 25.07.2019 and 12.10.2022 while upholding the Judgment dated 15.09.2012, have directed that the Judgment dated



15.09.2012 will be subject to the decision in the probate proceedings.

10. Thus, the contention of the learned Counsel for the Respondent is without merit.

11. In any event, it is settled law that while deciding an application for amendment of a suit under Order VI Rule 17 of CPC, the merit of the averments sought to be incorporated by way of amendment are not to be adjudicated by the Court at the stage of allowing the prayer for amendment. The relevant extract of the *Sampath Kumar* case is reproduced below:

“9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

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*11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. **The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer***



for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed."

[Emphasis Supplied]

12. This Court is in agreement with the learned Counsel for the Petitioner that while adjudicating an application for amendment of the plaint, adjudication on merits cannot take place, which from a reading of the Impugned Order, seems to have been done by the learned Trial Court. The relevant extract of the Impugned Order reflecting the same is below:

"13. Coming to the application in hand, it is observed that under the plea of technical loop holes, the plaintiff is trying to entirely change the nature of the suit as admittedly he has converted the substantial **relief to declare the Will dated 08.09.2010 executed by late Smt Sheela Devi in favour of the defendant to be consequential relief and made the relief of declaration to declare her owner of the suit property on the basis of the Will dated 23.05.1989 as the main relief,** which she is not entitled to claim as the judgment of Ld. ADJ South West in civil Suti No.195/11/2010 is upheld by the Hon'ble High Court of Delhi in RFA No.511/12.

14. **Therefore, the plaintiff in the present suit cannot be allowed to seek something indirectly which she is not entitled to claim directly. In other words, in light of the judgment of the Hon'ble High Court in RFA No.511/12, the plaintiff can stake claim only on the 50% share of the late Smt. Sheela Devi by proving that the Will dated 08.09.2010 executed in favour of the defendant** is not a valid document and she cannot be allowed to stake claim on the entire suit property on **the basis of Will dated 23.05.1989, which she has failed to prove before the Ld. ADJ-02, South West, Dwarka in Civil Suit No.195/11/2010 and the same is upheld by the Hon'ble High Court while dismissing the application under Order 41 Rule 27, CPC of the plaintiff herein to lead additional evidence.**"

[Emphasis Supplied]



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13. For the reasons as stated above, the Impugned Order is set aside. Consequently, the Application under Order VI Rule 17 of CPC filed by the Petitioner/Plaintiff is allowed.

14. The amended plaint shall be filed by the Petitioner within two weeks from today. The amended Written Statement shall be filed by the Respondent within two weeks thereafter.

15. The parties shall appear before the learned Trial Court on 13.05.2025.

16. The Petition is accordingly disposed of. Pending Application also stands closed.

17. It is however clarified that the Court has not expressed any opinion on the merits of the controversy. The rights and contentions of the parties are left open.

18. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 15, 2025/ ha

Click here to check corrigendum, if any