

IN THE COURT OF SH. ARUN SUKHIJA,
ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)
TIS HAZARI COURTS, DELHI.

SUIT NO. :- 150/2019

UNIQUE CASE ID NO. :- 487/2019

IN THE MATTER OF :-

Sh. Vijay Kumar Gupta and Anr.

....Plaintiffs

VERSUS

Sh. Anil Gupta and Ors.

....Defendants

::- O R D E R -::

Vide this Order, this court shall decide an application under Order 6 Rule 17 read with Section 151 CPC filed by the plaintiffs for amendment of the plaint.

The plaintiffs have filed the said application primarily on the ground that defendant no. 1 in his Written Statement has set up a Will dated 02.04.2011, registered on 07.05.2018, executed by Lt. Sh. Kali Ram Gupta. The plaintiffs submit that for the first time, plaintiffs came to know about the said Will after filing of the Written Statement by defendant no.1 and the plaintiffs want to challenge the said Will by way of amendment. The plaintiffs also want to add one more property of New Mahavir Nagar, Tilak Nagar, Delhi, area ad-measuring 150 sq. yards. It is submitted by the plaintiffs that during the Mediation proceedings, the plaintiffs came to know that the aforesaid property of New Mahavir Nagar, was purchased by Late Kali Ram Gupta as Benami in favour of defendant no. 3, which

was sold to defendant no. 1. The plaintiffs have also sought the addition of prayer clause in which it is mentioned that all the Gold articles of Late Sh. Kali Ram Gupta be made as part of estate of Late Kali Ram Gupta and be partitioned in 1/7th ratio between each of the plaintiffs and defendants.

The defendant no. 2 has not filed reply to the said application and even not contested the said application. The defendant no. 1 has filed the reply to the said application inter-alia on the following averments:-

- (a) The plaintiffs cannot be allowed to amend and implead the property which was alleged to be Benami property in the name of defendant no. 3. The said averment is vague and further prohibited under the Prohibition of Benami Property Transactions Act, 1988 and neither amendment, as prohibited by law, can be allowed to be incorporated nor relief can be claimed on the basis of said prohibited averment.
- (b) The Will dated 02.04.2011 executed by Late Kali Ram Gupta is a genuine Will, otherwise, the property has already been partitioned and the parties, including the plaintiffs are in separate possession prior to death of Late Kali Ram Gupta.

I have heard the ld. counsels for the parties and perused the material available on record.

FINDINGS AND CONCLUSION OF THE COURT

The ld. counsel for defendant no. 1, during the course of arguments, without admitting the contents, has not objected to the amendments, as made in para nos. 9A to 9G, however, the ld. counsel for defendant no. 1 submits that the amendments, as sought in para nos. 9H and 9I, cannot be allowed for the reason that the plaintiffs have, first of all, not pleaded the complete particulars of the

property in question and further, the plaintiffs have themselves pleaded in the application that the said property of New Mahavir Nagar was Benami property purchased by deceased Late Kali Ram Gupta. It is further argued that the said averment is hit by the Prohibition of Benami Property Transactions Act, 1988 and the same cannot be allowed to be taken on record being barred by law. The Ld. counsel for defendant no. 1 has also addressed the arguments that in terms of prayer a3, as mentioned in the application, the plaintiffs want to incorporate the gold articles, but without specifying the quantity of gold articles. It is further argued that the said averment of gold articles is totally vague and the same cannot be allowed to be incorporated in the manner the plaintiffs wanted to incorporate the same by means of present application.

The defendant no. 1 has raised the first objection that the plaintiffs have themselves claimed that New Mahavir Nagar property was purchased as Benami in the name of defendant no. 3, therefore, the same cannot be included. In my considered view, the particulars of the property are still to be elicited out and the same can be done only after the amendment is allowed by invoking the various provisions of law under the CPC. This Court cannot lose sight of the fact that the present case is for partition of the estate left by Late Sh. Kali Ram Gupta, the predecessor-in-interest of the parties. The question whether the same is barred by Prohibition of Benami Property Transactions Act, 1988 or it falls in any of the exemptions under the said Act, is also to be considered only after the complete particulars of the property, its source and the purpose for which it has been purchased would be known to the Court and same can't be adjudicated at this stage.

The another contention of Id. counsel for defendant no. 1 that the plaintiffs have not described the quantity of Gold and there is vague argument that defendant

no. 1 got Gold Articles from Late Kali Ram Gupta. In my considered view, the said aspect also can't be considered at this stage. Furthermore, in a suit for partition, each and every party is the plaintiff and also the defendant. The parties have to fairly disclose the properties/estate, which were left by the deceased and in the present case, by Late Sh. Kali Ram Gupta. Moreover, if the plaint has been presented as it is inclusive of amendments, as sought by the plaintiffs, the question arises, whether the plaintiffs cannot be allowed to elicit out, by invoking various provisions under the law, the exact details of the property/estate left out by Late Kali Ram Gupta or the Court is not having any power to elicit out the same. There can be no doubt that the plaintiffs or the Court can invoke various provisions of law in order to decide the entire controversy in the present case regarding the estate of the deceased and more so, in the suit for partition. Furthermore, the present suit is at very initial stage and the issues are yet to be framed.

Considering the overall facts and circumstances of the present case, the amendments sought by the plaintiffs are necessary in order to decide the real question of controversy between the parties and accordingly, the application under Order 6 Rule 17 read with Section 151 CPC is allowed subject to cost of Rs. 5,000/- to be paid by the plaintiffs to defendant no. 1 i.e. the contesting defendant.

**Announced through Video Conferencing on
this 12th day of June, 2020.**

ARUN
SUKHIJA

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Date: 2020.06.12
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(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi

CS No.150/19(ID no.487/19)
Vijay Kumar Gupta
Vs.
Anil Gupta

12.06.2020

The matter has been heard through cisco webex video conferencing.

Present: Sh. Yogesh Kumar Chandna, Ld. Counsel for the Plaintiff.
None for defendants

The matter was kept for pronouncement of order on the application under Order 6 Rule 17 CPC at 12.30 pm. The defendant No.1 for all practical purpose is contesting the suit. The Ahlmad has informed that the meeting ID for pronouncement of the order was also sent to the Ld. Counsel for defendant No.1. The Ld. Counsel for Plaintiff has joined the VC at about 12.30 pm but no one has turned up to join VC on behalf of defendants and this court has waited from 12.30pm to 12.40 pm. Vide separate order announced through Video Conferencing the application under Order 6 Rule 17 CPC filed by the plaintiff is allowed subject to cost of Rs.5,000/- to be paid to contesting defendant No.1. The Amended Plaint is taken on record. The defendants are directed to file the amended written statement within a period of 60 days with the advance copy to the Ld. Counsel for Plaintiff. The time of 60 days is granted owing to Covid-19 Pandemic. The Soft Copy of the Amended written statement can also be emailed to this court through email ID readeradj07central@gmail.com. Put for Replication, if any, admission denial of documents and framing of issues on **05.10.2020**.

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(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/12.06.2020