



2025:DHC:949



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

% *Reserved on : 15th January 2025*

Pronounced on: 14th February 2025

+ **I.A. 29536/2024 in CS(OS) 595/2022**

MEHIMA NANDA & ANRPlaintiffs

Through: Mr. Tanmaya Mehta, Mr. Karan
Nagrath, Ms. Nupur Kumar, Ms.
Rashmi Gogoi, Ms. Niharika
Nagrath, Mr. Ambuj Tiwari and
Mr. Arjun Nagrath, Advocates

versus

AMRITPAL NANDA & ORS.Defendants

Through: Mr. Gagan Gupta, Sr. Advocate
with Mr. Rushab Aggarwal,
Mr. Padmesh Mishra, Mr. Arkaj
Kumar, Ms. Tanya Aggarwal, Mr.
Aakarsh Mishra, Mr. Jasbir Singh,
Advocates for Defendant Nos. 1
to 5

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

JUDGMENT

ANISH DAYAL, J.

I.A. 29536/2024 (Under Order VI Rule 17, CPC)

1. This application has been filed under Order VI Rule 17, Code of Civil Procedure, 1908 ('CPC') seeking amendment of the plaint filed for partition of the estate of *Late Shri Sukhpreet Singh Nanda*, husband of plaintiff no.1 ('deceased').



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Factual Background

2. As per plaintiff no.1 ('P1'), her husband died intestate on 3rd May 2021, owing to COVID-19. Plaintiff no.2 ('P2') is the minor daughter of P1 and the deceased, currently aged about 4.5 years (*born on 3rd November 2020*). P1 and the deceased's marriage was solemnised on 2nd April 2010, as per Sikh rites. Defendant no.1 ('D1') is the deceased's mother; defendant no.2 ('D2') is the deceased's brother, defendant nos.3 ('D3'), 4 ('D4'), and 5 ('D5') are D2's wife, son, and daughter respectively. Defendant nos. 6 to 9 are various financial organizations/entities which may not be relevant for disposing of this application.

3. P1 contended that pursuant to the demise of her husband during the pandemic, D1 to D5 concealed the death from P1 and cut all ties with the plaintiffs. As per P1, stand taken by defendant nos. 1 to 5 was inimical to the plaintiffs and she stated that she has no relation with the family and would not get any share of the movable or immovable properties. P1 claims that she was threatened that if she relinquishes her rights, only then would she be able to take ornaments, *stridhan*, jewellery, documents, and other articles.

4. The immovable property in question is house bearing no. D-33 South Extension- II, New Delhi-110049 ('**the said property**'). As per a family settlement, the deceased had $\frac{1}{2}$ share in the said immovable property. Accordingly, by intestate succession, $\frac{2}{3}$ rd of the deceased's share would devolve on the plaintiffs by virtue of them being Class-I legal heirs of the deceased.



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5. There were other immovable properties *viz.* a plot at Dehradun, a plot at Bhiwadi, and a plot at Shahpura of which the plaintiffs did not have any further information. In this context, a decree of partition was sought for declaring plaintiffs to be entitled to an appropriate share in the said properties, for rendition of accounts, injunction, and other attendant reliefs.

6. Written statement was filed by D1 to 5, where they pleaded that the said property was sold through a Sale Deed dated 29th June 2007 by the deceased along with D2 and D3, to Phobos Trading Pvt. Ltd (**'Phobos'**).

7. It was also stated that the sale was accepted by the deceased and was never challenged by any of the vendors. At the time of his demise, the deceased had no ownership rights in the said property. Accordingly, no share would devolve on the legal heirs.

Submissions by Plaintiffs' Counsel

8. In addition to the above, an assertion was made in the written statement that certain debentures, held in favour of the deceased, had devolved through an unregistered Will dated 15th February 2021 in favour of D2.

9. Confronted with this in the written statement, the plaintiffs moved this application contending that both the Sale Deed regarding the said property as well as the unregistered Will were false and fabricated and should be declared null and void.

10. Accordingly, new paragraphs were sought to be added in the plaint in this regard, in particular, additions of paras 13A-13F to the



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plaint, as well as 29A, 31A-31B and additional plea seeking a declaration of the Sale Deed dated 29th June 2007 and the unregistered Will dated 15th February 2021 to be declared as null and void.

Submissions by Defendants' Counsel

11. Counsel for the defendant raised the following objections – *firstly*, that the said amendment alters the very nature of the suit and therefore cannot be permitted; *secondly*, Article 59 of the Limitation Act, 1963 (**'Limitation Act'**) would prohibit entertaining this plea of the plaintiffs since seeking cancellation of both the documents would be barred by limitation; *thirdly*, without prejudice to the other submissions, the vendee of the said property being Phobos Incorporated Company, would have to be added as an independent juristic entity; and *fourthly*, that in the replication, the plaintiffs had not denied knowledge of the Sale Deed.

12. Counsel for defendant has relied on the following judgments in support of his argument that an amendment cannot be permitted, if the said amendment raises a time barred claim, and changes the nature of the suit itself:

- a. *Reevajeetu Builders & Developers Narayanaswamy & Sons*, (2009) 10 SCC 84:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;



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(2) whether the application for amendment is bona fide or mala fide;

(3) *the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) *as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

(emphasis added)

b. ***Basavaraja v. Indira***, (2024) 3 SCC 294:

“13. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

14. This Court in Revajeetu case [Revajeetu Builders & Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.

15. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to



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be seen at the time of consideration of any application for amendment of pleadings. Any right accrued to the opposite party cannot be taken away on account of delay in filing the application.

16. In the case in hand, the compromise decree was passed on 14-10-2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 8-2-2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (reference can be made to Article 59 in Part IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time-barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.”

(emphasis added)

c. **LIC v. Sanjeev Builders (P) Ltd.**, 2022 SCC OnLine SC 1128:

“71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or



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prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order 6 Rule 17CPC.

71.3. *The prayer for amendment is to be allowed:*

71.3.1. *If the amendment is required for effective and proper adjudication of the controversy between the parties.*

71.3.2. *To avoid multiplicity of proceedings, provided*

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

71.6. *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory*



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decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder



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Kr. Gandhi [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897].)”

(emphasis added)

13. On the issue of limitation, defendant’s counsel effectively stated that the limitation would be applicable from the date of knowledge of existence of documents of which nullity is sought. In this regard, reliance was placed on the following decisions:

a. *Sukhbiri Devi v. Union of India*, 2022 SCC OnLine SC 1322:

23. The findings of the Trial Court with respect to preliminary issue of limitation are based on the relevant dates revealed from the pleadings of the plaintiffs in the plaint itself. True that in the plaint it is repeatedly alleged that the relinquishment deed was obtained fraudulently by the 5th respondent. However, conspicuously its date was not mentioned. But then the plaint averment is that their predecessor-in-interest Shri Nahar Singh, on coming to know about the use of the said Relinquishment Deed, had preferred an objection on 05.04.1991 to the authorities whereunder he sought not only for its cancellation but also on the ground of obtainment by playing fraud for refraining them from issuing allotment of the alternative plot in the exclusive name of the 5th respondent. In this context it is also relevant to note that going by the plaint averments after the death of Shri Nahar Singh on 14.05.1993 the original first plaintiff, who is none other than one of the sons of Shri Nahar Singh, filed representations on the lines of the objection taken up by his father. Even if non-mentioning of the date of Relinquishment Deed is not taken as purposeful that cannot and will not therefore save



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the plaintiffs from the inescapable, adverse finding on the question of limitation to bring in a suit against the said Relinquishment Deed. Evidently, Suit No. 410 of 2000 was filed only on 14.06.2000. Thus, it is very much clear from the plaint averments that the Relinquishment Deed is anterior to the date of letter of intimation to the 5th respondent (08.03.1991) and obviously, the date of objection against the same was firstly preferred by deceased Nahar Singh viz., 05.04.1991. Evidently, the aforesaid two dates specifically mentioned in the plaint were taken into account by the Trial Court as also by the First Appellate Court and the High Court in the matter of consideration of the question “whether the suit was barred by limitation.” The manner of consideration by the Trial Court which ultimately resulted in dismissal of suit No. 410/2000 would reveal, as stated hereinbefore, that it had determined the preliminary issue regarding the period of limitation with reference to the averments in the plaint. The dismissal of the suit was in accordance with the decision on the said preliminary issue. Since we have already extracted the operative portion of the Trial Court judgment, we do not think it necessary to refer to its reasons and findings.

26. The challenge against the impugned judgment of the High Court is that it wrongly applied Article 58 of the Limitation Act while confirming the concurrent decisions of the First Appellate Court and the Trial Court. In this context, it is relevant to note the prayers made in the suit by the plaintiffs which were extracted hereinbefore. Undoubtedly, the plaintiffs sought for



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declarations in the manner referred above and thereby, made the nature of the suit as declaratory. This position is indisputable. It is true that the Trial Court though found the period of limitation as three years taking into account the nature of the reliefs it did not specifically mention the relevant provision in its judgment. There can be little doubt with respect to the position that misquoting or non-quoting of a provision by itself will not make an order bad so long as the relevant enabling provision is in existence and it was correctly applied though without specifically mentioning it. The High Court had only referred to the relevant, applicable provision under the Limitation Act upon considering the nature of the suit and the reliefs sought for, in the plaint. We do not find any perversity or illegality in the finding of the High Court for sustaining the concurrent findings with respect to the issue whether the suit was barred by limitation.”

(emphasis added)

b. *Rajpal Singh v. Saroj* (2022) 15 SCC 260:

“14. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the



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consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned First Appellate Court was justified and right in setting aside the judgment and decree passed by the learned Trial Court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the First Appellate Court dismissing the suit and consequently restoring the judgment and decree passed by the Trial Court.”

c. ***M.R. Vinoda v. M.S. Susheelamma***, (2021) 20 SCC 180:

“38. In our opinion, Article 60 would not apply as this is not a case of transfer of property made by a guardian of a ward. Article 109 applies to a plaint for setting aside the father's alienation of ancestral property governed by Mitakshara law. As per Article 109, the suit must be filed within 12 years when the alienee takes possession of the property. When we apply Article 109, the suit would be barred by limitation as it was filed in 1994, nearly 24 years after the relinquishment deed (Ext. P-2) was executed to the fourth



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defendant in favour of Patel Mallegowda branch and nearly 21 years after Plaintiff 3 attained majority in 1973. For the same reason, the suit would be barred under Articles 58 and 59 of the Limitation Act as it had been filed post three years from the date the right to sue first accrued as per Article 58 and when the facts entitling the plaintiffs to have the instrument or decree cancelled or set aside or the contract rescinded first came to the knowledge of the plaintiffs as per Article 59. The High Court, in our opinion, rightly rejected the specious and untrue plea of the plaintiffs that till two months before the filing of the suit, they were unaware and did not know about execution of the relinquishment deed by their elder brother, the fourth defendant.”

(emphasis added)

Rejoinder by Plaintiffs’ Counsel

14. In rejoinder, plaintiff’s counsel stated that the question of knowledge of the Sale Deed and the Will would not arise since it was only when the written statement was filed that the plaintiffs came to know about them. Further, he relied on the decision of Supreme Court in ***Daliben Valjibhai & Ors. v. Prajapati Kodarbhai Kachrabhai & Anr.*** 2024 INSC 1049, for asserting that the limitation period could not commence from the date of registration but from the date of knowledge as per Article 59 of the Limitation Act. Relevant portions are extracted as under:

“10. The First Appellate Court came to the conclusion that the defendants made an application for correcting the revenue records only in the year 2017 and on the said application the Deputy Collector issued notice to the plaintiffs in March 2017 and that was the time when the plaintiffs came to know about the execution of the



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sale deed. It is under these circumstances that the suit was instituted in the year 2017. While the High Court came to the correct conclusion that under Article 59 of the Limitation Act, a suit can be instituted within 3 years of the knowledge, it proceeded to return a finding that in cases where the document is registered, the knowledge must be presumed from the date of registration.

11. This Court had to deal with a similar situation in *P.V. Guru Raj Reddy v. P. Neeradha Reddy*. A suit instituted by the plaintiff in the year 2002 for cancellation of sale deed of year 1979 on the ground that the knowledge of fraud was acquired only in 1999, was objected to by the defendant in an application under Order 7 Rule 11 on the ground that it is barred by limitation. This Court held:

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the



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claims will have to be adjudicated in the course of the trial.

6. *In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.*”

(emphasis supplied)

...

13. *In view of the above, there was no justification for the High Court in allowing the application under Order 7 Rule 11, on issues that were not evident from the plaint averments itself. The High Court was also not justified in holding that the limitation period commences from the date of registration itself. In this view of the matter the judgment of the High Court is unsustainable.*”

(emphasis added)

15. It was further contended that as regards the addition of Phobos as a party, they have already pleaded that in paragraph 13 of the application for Phobos to be the new proposed defendant no.7. Parts of the replication were pointed out to assert that there was a clear denial by the



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plaintiff *inter alia* in paragraphs 3 and 5-6 of the para-wise reply, and that it was absolutely wrong that the sale was accepted by the deceased.

Analysis

16. Heard counsel for both parties and perused the material placed on record.

17. It is evident from the pleadings that the Sale Deed and the unregistered Will were first propounded in the written statement. Upon receiving knowledge of these two documents, which would have a direct impact on plaintiffs' claim for share in the properties (*being Class I legal heirs of the deceased*), plaintiffs seek an amendment to the plaint and invalidity and nullification of the said documents. This, in the opinion of this Court, is in consonance with the nature of the suit seeking share in the properties in which the deceased had rights.

18. After the unfortunate passing away of the deceased due to COVID-19, the plaintiffs, being the widow and infant respectively, were left rudderless, allegedly being denied any share in the deceased's property. To be relegated, for this purpose, to file a separate suit would not be justified and would only protract litigation and introduce multiplicity of proceedings.

19. As regards the issue of limitation which Senior Counsel for defendants pressed for being examined at this stage itself, the Court *prima facie* comes to the view that it cannot be rejected on this ground, particularly at this stage when the evidence has still not been led. Even as per Article 59 of the Limitation Act, the time period commences from the date of the knowledge of the said document of which nullity/cancellation is sought. Considering it is adverted by the plaintiffs that the



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knowledge was only obtained from the time of filing of the written statement, which is denied by the defendant, this issue becomes a disputed fact which would have to go through the rigours of trial.

20. In *Sukhbiri Devi* (*supra*), the Trial Court had dismissed the plaintiff's suit on the preliminary issue of limitation. The same was challenged; however, the first and second appeal, both were dismissed. The Supreme Court, in paragraph 19 of the judgement, observed that although limitation is a mixed question of fact and law, when foundational facts regarding the starting point of limitation is specially made out from averments in plaint, issue of limitation could be framed as preliminary point and can be decided initially.

21. Supreme Court dismissed the appeal noting that the declaratory relief sought by plaintiff in the suit cannot be against the relinquishment deed being obtained fraudulently. An averment was made that plaintiff came to know about use of the relinquishment deed and had preferred an objection in 1991. Plaintiffs, therefore, could not be saved from the adverse finding on question of limitation since the suit filed challenging the relinquishment deed was filed only in the year 2000.

22. In the case before us, there is no date prescribed as to when the plaintiff came to know about the Sale Deed and unregistered Will except when the written statement was filed.

23. In *Rajpal Singh* (*supra*), the Trial Court had dismissed the suit for specific performance of Agreement to Sell. An appeal had been preferred which was allowed by the High Court in favour of plaintiff. The defendant then approached the Supreme Court. Therein, plaintiff sought cancellation of Sale Deed dated 19th April 1996. Plaintiff



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however, filed the suit in 2001 despite having come to know about the defendants being in possession and cultivating the land since 1996. As stated above, in this case as well, the facts are quite different, and evidence had already been led in a decided suit.

24. Similarly in *M. R. Vinoda (supra)* the suit was dismissed by the Trial Court as barred by limitation. Plaintiff therein sought to declare a relinquishment deed of 1969 as null and void. The first appeal was allowed and subsequent second appeal was allowed in favour of defendant by the High Court. The plaintiff had thereafter moved the Supreme Court. Supreme Court, while rejecting the appeal, noted the plaintiff's assertion that they had knowledge only after suit was filed, was wrong in facts of the case.

25. Thus, reliance by defendants' counsel on *Sukhbiri Devi (supra)*, *Rajpal Singh (supra)*, and *M. R. Vinoda (supra)* may not be relevant since these decisions were passed in context of their own facts and in decided suits. Also, it may not be applicable to what is stated in this case where nothing can be ascertained from the plaint whether they had knowledge of the Sale Deed or the unregistered Will.

26. This matter is at a nascent stage; the issues are yet to be framed. Therefore, in the opinion of this Court, reliance on these decisions may not be apposite. It may not be correct to apply these decisions, propositions, and principles of law relating to assessment of limitation, in situations where parties have sought cancellation of documents in suits pending and not gone through trial.

27. The factors regarding the amendments of the plaints under Order VI Rule 17, CPC propounded in *Revajeetu (supra)*, *Basavraj (supra)*,



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and *LIC (supra)* all point out to an assessment of the basic nature of the case and whether the amendment fundamentally changes the nature and character of the suit. Plaintiffs essentially seek a share in property of the deceased and a preliminary decree, and therefore, there is no change in the nature and character of the suit.

28. As regards reliance on principles enunciated in the above decisions, the threshold to allow an amendment through an application under Order VI Rule 17, CPC is crossed.

29. As per the decision in *LIC (supra)*, amendment is required for effective and proper adjudication of the controversy between the parties and avoid multiplicity of proceedings. The Supreme Court highlights the use of ‘*shall*’ in Order VI Rule 17 CPC reflecting the mandatory nature of the provision.

30. Accordingly, considering that the defendants would have all the rights to raise the issue of limitation on the amended claims, no prejudice is caused to them. There is no impediment in allowing an amendment to a suit, as per the principles enunciated in *Revajeetu (supra)*.

31. *Revajeetu (supra)* itself enunciates that the amendment must be necessary for determination of the real question and controversy, and states that it is the basic test. On application to the facts of this case, the leaning would certainly be in favour of allowing this amendment.

32. Essentially, P1, the wife of the deceased, and P2, the infant daughter, are claiming a share in the assets of the deceased, being Class-I legal heirs.

33. The two documents which are propounded by the defendants become obstacles for them to profess their claim and therefore, plaintiffs



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are well within their rights to challenge the same. The real controversy, therefore, relates to plaintiffs' share and would require determination of the legal standing and tenability of the unregistered Will and the Sale Deed of the said property.

34. More importantly, in the 2024 decision in *Daliben Valjibhai* (*supra*), the Apex Court has categorically stated that limitation period does not commence from the date of registration while considering Article 59 of the Limitation Act. The Court referred to an earlier decision in *P.V. Guru Raj Reddy & Anr vs P. Neeradha Reddy* (2015) 8 SCC 331, where the suit was instituted by the plaintiff in the year 2002 for cancellation of Sale Deed of 1979, on the ground that the knowledge of fraud was only acquired in 1999. The defendant filed an application under Order VII Rule 11 CPC. The Supreme Court stated that plaintiff's claim regarding knowledge of essential facts, giving rise to the cause of action as pleaded, would have to be accepted as correct.

35. In *Chotanben v. Kirtibhai Jalkrushnabhai Thakkar* (2018) 6 SCC 422, where the suit for cancellation of sale deed was opposed in an application under Order VII Rule 11 CPC on ground of limitation, the Supreme Court held as under:

“19. In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being



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barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC.”

(emphasis added)

36. In this matter, it is clear that no aspect of the plaint refers to a prior knowledge, expressly or impliedly, of the unregistered Will and the Sale Deed which came to light for the first time in the written statement. Therefore, the question of imputing knowledge to the plaintiffs for the purpose of barring their amendment on the basis of limitation is completely unmerited.

37. In light of the above discussion, present application is allowed and accordingly disposed of.

38. Amended plaint be taken on record of this Court. Amended written statement be filed in accordance with applicable law, rules, and procedure.

39. Judgment be uploaded on the website of this Court.

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1. List this matter before the Joint Registrar (Judicial) on 20th March 2025 for further proceedings.

**(ANISH DAYAL)
JUDGE**

FEBRUARY 14, 2025/SM/sc