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

% *Date of Decision: 13th May, 2025*

+ CM(M) 263/2020 & CM APPL. 7864/2020

N C JAIN & ORS

.....Petitioners

Through: Mr. Smita Maan, Vishal Maan, Kartik Dabas, Advocates.

versus

PARVATI JAIN & ORS

.....Respondents

Through: Mr. Ashok Kumar Bahl with
Mr. Rajiv Kumar Thakur, Advocates
for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners herein are defendants in a civil suit which was instituted in the year 2012 as Civil Suit (OS) 1477/2012. Such suit was filed before this Court on its Original Side but with the change in pecuniary jurisdiction, it got transferred to District Courts.
2. Such suit seeks possession, injunction and recovery of arrears and damages.
3. The plaintiffs in the abovesaid suit are Ms. Parvati Jain and three others.
4. Admittedly, plaintiff No.1, Ms. Parvati Jain filed another suit in the year 2014 and in such suit, she is seeking declaration and permanent injunction.
5. In such second suit, the defendants are the same and they seem to have taken an objection that such second suit is barred under Order II Rule 2 CPC.



6. Both the suits are pending adjudication before the same Court and are at the stage of plaintiffs' evidence.
7. However, in relation to the first suit, the plaintiffs moved an application under Order VI Rule 17 CPC praying therein that the plaintiffs may be permitted to incorporate relief of declaration in first suit itself. They also seem to contend that once the abovesaid amendment is allowed and the prayer is incorporated, the plaintiffs would withdraw their second suit which is with respect to declaration and injunction.
8. Learned Trial Court *vide* impugned order dated 12.12.2019 has permitted such amendment.
9. Such order is under challenge.
10. Learned counsel for the petitioners (defendants in both the sides) submits that, there was no one to prevent the plaintiffs to incorporate relief of declaration when the suit was instituted but, for the reasons best known to the plaintiffs they never sought any relief and moreover, instead of amending the first suit, in the beginning, they rather chose to file a separate suit. It is submitted that in view of the abovesaid peculiar situation, the request for amendment coming at such a belated stage, should not have been allowed by the learned Trial Court.
11. However, after hearing arguments for some time, learned counsel for the petitioners submits that, without prejudice to their rights and contentions, she would not press the present petition. She, however, supplements that while allowing the amendment application, the learned Trial Court had also granted defendants an opportunity to file amended written statement and thereafter the matter was to be considered for admission/denial of documents and framing of additional issues, if any. She submits that



defendants have yet not submitted amended written statement and in their such amended written statement, they would take a preliminary objection that the relief of declaration had become time-barred and would also make a separate request to the learned Trial Court to treat such issue as a *preliminary issue*.

12. Learned counsel for the respondents/plaintiffs submits that there is nothing to indicate that the relief of declaration has become time-barred but at the same time, he contends that since the petitioners herein are not pressing the present petition, and since defendants have already been given liberty to file amended written statement, he would have no objection, if the defendants, as advised, take any such objection including preliminary objection in their amended written statement. He submits that if any such application is moved by them with the prayer that the issue of relief of declaration being time-barred be treated as a preliminary issue, he would oppose such request, by filing appropriate reply.

13. Keeping in mind the abovesaid statements made at the Bar, the present petition is disposed of as not pressed, while giving liberty to the defendants to take objections as they may be advised, including with respect to relief of declaration being time-barred. It will also be open to the defendants to move any separate application with prayer to treat any particular issue as a preliminary issue and the learned Trial Court would consider the same, without being prejudiced by the observations appearing in the impugned order.

14. The petition stands disposed of as not pressed in aforesaid terms.

15. It is, however, clarified that this Court has not made any observation with respect to the contentions of the respective parties and it will be entirely



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upto the learned Trial Court to consider any such request and to dispose the same, after giving due opportunity of hearing to both the sides.

16. The petition stands disposed of in aforesaid terms.
17. Pending applications, if any, also stand disposed of.

(MANOJ JAIN)
JUDGE

MAY 13, 2025/st/pb