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

Reserved on: 31.07.2026

Pronounced on:15.09.2026

\# **CNR No. DLHC010242012024**

\+ FAO(OS) 58/2024 & CM APPL. 25726/2024

MANJU GAIND .....Appellant

Through: Mr. Abhay Gaind & Mr. Ajay Gaind, Advs.

versus

KAMLA RANI & ORS. .....Respondents

Through: Mr. Manish Vashishth, Sr. Adv. with Mr. P. K. Rawal, Mr. Tarun Agarwal, Mr. Akhil Singh, Mr. Vedansh Vashisht & Mr. Dipankar Aggarwal, Advs. for R-1 to 5.
Mr. Ray Vikram Nath, Ms. Riyal Suryavanshi, Mr. Ayush Nautiyal & Mr. Harshvardhan Jha, Advs. for R-6. (*through VC*)

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. This appeal, preferred under Section 10 of the Delhi High Court Act, 1966 read with Section 104 read with Order XLIII Rule 1(w) of the Code of Civil Procedure, 1908, impugns the order dated

20.02.2024, uploaded and signed on 29.02.2024, passed by the learned Single Judge in I.A. No.7919/2019 in CS(OS) 317/2018, whereby the application filed by respondent nos.1 to 5 (defendant nos.1 to 5 in the suit) under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of their written statement was allowed, and the application filed by the appellant, being I.A. No.16498/2018 under Order XII Rule 6 of the Code of Civil Procedure, 1908, was disposed of as not pressed.

2. The appellant, Smt. Manju Gaind, instituted CS(OS) 317/2018 before the learned Single Judge, seeking partition and rendition of accounts in respect of properties stated to constitute the estate of her late father, Sh. Krishan Lal, who died intestate. The parties to the suit are the legal heirs of late Sh. Krishan Lal, namely, respondent no.1 (his widow, Smt. Kamla Rani), respondent nos.2 to 4 (his sons, Mr. Praveen Kumar, Mr. Sunil Kumar and Mr. Amit Arora), and respondent nos.5 and 6 (his daughters), together with the appellant, who is also one of his daughters. It was the case set up in the plaint that late Sh. Krishan Lal, who carried on business under the name and style of "Krishan Lal & Sons" and had also constituted an HUF of the same name, purchased properties out of his own funds and those of the said business/HUF, some in his own name, some in the name of his wife (respondent no.1), and some in the names of his sons (respondent nos.2 to 4), and that all such properties, irrespective of the

name in which they stood, formed part of his estate, in which the appellant, as one of his seven legal heirs, was entitled to a 1/7th share.

3. Respondent nos.1 to 5 filed their written statement resisting the suit. The written statement was filed and re-filed on more than one occasion, on account of objections raised by the Registry. In paragraph 13 of the Preliminary Submissions of the written statement, respondent nos.1 to 5 set out, in tabular form, particulars of properties stated to fall under the heading "Properties in Which the Plaintiff Has Received Share", which included, among other properties, agricultural land admeasuring 3 kanal 14 marla, Khasra No.14/12/2/2, Village Bharoli Kalan, Tehsil and District Pathankot, Punjab, corresponding to prayer clause 1(f) of the plaint, agricultural land admeasuring 4 kanal 11 marla, Khasra No.31-R,1/3,2/1,10/1, Village Bharoli Kalan, corresponding to prayer clause 1(g) of the plaint, and land admeasuring 2 kanal 10 marla at Bharoli Kalan, corresponding to prayer clause 1(q) of the plaint. Paragraph 14 of the Preliminary Submissions stated that, in view of a family settlement, respondent no.1 had become the proprietor of "M/s Krishan Lal & Sons" and "remains the Proprietor of Proprietorship Firm 'M/s Krishan Lal & Sons' till date".

4. On the strength of the aforesaid averments in the written statement, the appellant filed I.A. No.16498/2018 under Order XII Rule 6 of the Code of Civil Procedure, 1908, seeking a decree on the basis of what were claimed to be admissions contained therein.

5. Approximately six months after the filing of I.A. No.16498/2018, respondent nos.1 to 5 filed I.A. No.7919/2019 under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking amendment of the written statement. It was their case that the contents of paragraphs 13 and 14 of the Preliminary Submissions, referred to above, contained typographical errors and did not correctly reflect the factual and revenue position, and that the amendments sought were clarificatory in nature. By the said application, respondent nos.1 to 5 sought to amend the heading "Properties in Which the Plaintiff Has Received Share", appearing over the entries pertaining to the properties at prayer clauses 1(f) and 1(q) of the plaint, to read "Properties in which Mutation Entry has been made in name of Plaintiff". Further, sub-paragraph 2 of paragraph 13, pertaining to the property at prayer clause 1(g) (measuring 4 kanal 11 marla), was sought to be deleted from beneath the said heading and re-inserted, without any change to its contents as a renumbered sub-paragraph 6 under a new heading, "Properties owned by Defendant No.3 Mr. Sunil Kumar". The contents in the original written statement already recorded the "Owner" of the said property as "Defendant No.3 Sh. Sunil Kumar", and narrated its purchase by respondent no.1 from third parties vide sale deed dated 06.09.1988 and its subsequent transfer to respondent no.3 vide sale deed dated 18.06.2012. Additionally, in paragraph 14 of the Preliminary Submissions, the concluding sentence, "The Defendant No.1 remains the Proprietor of Proprietorship Firm 'M/s Krishan Lal & Sons' till date", was sought to

be deleted, on the stated ground that the GST registration of the said firm, cancellation whereof had been applied for in 2017, stood cancelled in 2018.

6. I.A. No.16498/2018 (under Order XII Rule 6) and I.A. No.7919/2019 (under Order VI Rule 17) remained pending before the learned Single Judge from December 2018 onward. By the impugned order dated 20.02.2024, the learned Single Judge allowed I.A. No.7919/2019, and, upon recording that the appellant did not press I.A. No.16498/2018, disposed of the latter application as not pressed.Aggrieved by the impugned order, the appellant has preferred the present appeal.

7. Learned counsel for the appellant submitted that the original averments in paragraphs 13 and 14 of the written statement constituted unambiguous and unequivocal admissions of the 1/7th share of the appellant in the properties in question, which created substantive rights in her favour that could not be undone by a subsequent amendment styled as clarificatory or typographical.

8. It was submitted that the effect of the amendment permitted by the impugned order is not confined to correction of a typographical slip, but alters the substance of the written statement, inasmuch as it removes the property at prayer clause 1(g) altogether from the category of properties in which the appellant is stated to have received her share, re-characterising it instead as the personal property of respondent no.3, and substitutes the heading "Properties in Which the

Plaintiff Has Received Share" with "Properties in which Mutation Entry has been made in name of Plaintiff", thereby seeking to reduce what was earlier pleaded as an admission of ownership/share to a mere reference to entries of mutation.

9. It was submitted that documentary material placed on record by respondent nos.1 to 5 themselves, namely, sale deeds executed inter se the respondents in respect of the properties in question, demonstrated that the properties had been dealt with on the basis that the appellant held a 1/7th share therein as a legal heir, and that this position could not, in law, be resiled from by way of amendment.

10. It was further contended that the impugned order does not record reasons for allowing the amendment, particularly where the order affects vital and valuable rights of the parties, and that the learned Single Judge did not deal with the objections filed by the appellant to I.A. No.7919/2019, and proceeded to allow the amendment application while simultaneously disposing of the application filed by the appellant under Order XII Rule 6 as not pressed, without appreciating that the latter application came to be given up only in view of the amendment permitted in the same order.

11. It was submitted that even assuming, without admitting, that the amendment corrected typographical errors, such correction could not have the effect of depriving the appellant of her 1/7th share in properties forming part of the estate of late Sh. Krishan Lal. On these grounds, it was prayed that the impugned order dated 20.02.2024 be

set aside, and that the amended written statement filed by respondent nos.1 to 5 be directed to be taken off the record of CS(OS) 317/2018.

12. Per contra, learned counsel appearing for respondent nos.2 to 5 opposed the appeal and supported the impugned order. It was submitted, at the outset, that the real issue is governed by the Memorandum of Family Settlement dated 19.04.2002, not placed on record by the appellant, which vests the estate of late Sh. Krishan Lal exclusively in respondent no.1 and, by virtue of Section 14 of the Hindu Succession Act, 1956, renders her the absolute owner thereof.

13. It was specifically submitted in this regard that the said Family Settlement was drafted by Shri Ajay Gaind, husband of the appellant upon the instructions of the parties, and was signed by him as an attesting witness. It was submitted that both the appellant and her husband were thus fully aware of its execution and contents, and that neither of them has, in over two decades since 19.04.2002, taken any step to impeach or set aside the Family Settlement, so that the appellant continues to be bound by it and is estopped from resiling from its terms.

14. It was further submitted that there is, in any event, no unconditional, unambiguous or unequivocal admission on the part of respondent nos.1 to 5 of the nature alleged by the appellant, and that the written statement must be read as a whole, and is replete with preliminary objections going to the root of the suit, including that it is barred under Sections 3 and 4 of the Benami Transactions

(Prohibition) Act, 1988, and that it does not lie in respect of the personal properties of respondent nos.1 to 5, objections which are inconsistent with any such admission.

15. It was submitted that the property at prayer clause 1(g) is the personal property of respondent no.3, purchased by him from respondent no.1 vide sale deed dated 18.06.2012, she having herself purchased it from third parties vide sale deed dated 06.09.1988, and was inadvertently and erroneously included under the heading "Properties in Which the Plaintiff Has Received Share", and that the properties at prayer clauses 1(f) and 1(q) reflect mere mutation entries in the revenue record, which do not by themselves confer or prove title.

16. It was further submitted that the sale deeds relied upon by the appellant as evidencing dealings between the respondents inter se in respect of the properties in question reflect transfers between family members, without monetary consideration, executed several years after the Memorandum of Family Settlement dated 19.04.2002, for reasons of family convenience, and do not detract from or repudiate the family settlement, which none of the parties to those sale deeds has ever challenged.

17. It was submitted that the deletion of the concluding sentence of paragraph 14 regarding respondent no.1 continuing as proprietor of "M/s Krishan Lal & Sons" was necessitated by the cancellation, in

2018, of the firm's GST registration, and was accordingly a factual correction.

18. It was further submitted that the power to pronounce judgment on admissions under Order XII Rule 6 CPC is discretionary and cannot be claimed as of right, particularly where the defendants have raised objections going to the root of the case, and that the impugned order was passed after considering the detailed submissions of both parties and the documents on record, and does not alter the nature or character of the suit. On these grounds, it was submitted that the appeal, including the reliefs claimed with respect to the amended written statement, is misconceived and liable to be dismissed.

19. We have heard learned counsel for the parties and perused the record. The only issue that arises for our consideration is whether the learned Single Judge was justified in allowing I.A. No.7919/2019 filed by respondent nos.1 to 5 under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking amendment of their written statement, and whether the amendment so permitted causes any such prejudice to the appellant as would warrant interference in the present appeal.

20. In ***B.K. Narayana Pillai v. Parameswaran Pillai***, (2000) 1 SCC 712, the Supreme Court explained that Order VI Rule 17 of the Code of Civil Procedure, 1908 confers a wide power to permit amendment of pleadings at any stage, to be exercised liberally and without a hypertechnical approach, particularly where the other side can be compensated in costs, so that technicalities of law do not hamper the

courts in the administration of justice. The Court went on to hold that this liberal approach applies with even greater force to the amendment of a written statement than to a plaint, since the question of prejudice is less likely to arise in the former case. A defendant has a right to take an alternative or inconsistent plea in defence, subject only to the qualifications that the proposed amendment must not subject the other side to injustice, must not result in the withdrawal of an admission genuinely made in the plaintiff's favour, and must not alter or substitute a new cause of action or defence for the one originally raised. The Court further clarified that an error or mistake in the original pleading, if not fraudulent, and delay in seeking its correction, do not by themselves furnish a ground to refuse the amendment, since any resulting inconvenience can ordinarily be compensated in costs. The relevant portion of the judgment is extracted below.

> *"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation….*

.....“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by

> *costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."*

21. In ***Revajeetu Builders and Developers v. Narayanaswamy and Sons***, (2009) 10 SCC 84, the Supreme Court, after examining the body of case law on amendment of pleadings, laid down certain factors that a court must bear in mind while granting or refusing an amendment under Order VI Rule 17, namely, whether the amendment is imperative for the proper and effective adjudication of the case, whether the application is bona fide or mala fide, whether the amendment would cause the other side such prejudice as cannot be compensated adequately in money, whether refusing the amendment would itself lead to injustice or to multiplicity of proceedings, whether the amendment fundamentally changes the nature and character of the case, and whether, as a general rule, a fresh suit on the amended claim would on the date of the application be barred by limitation. The Court clarified that these factors are illustrative and not exhaustive, and fall to be applied cumulatively to the facts of each case. The relevant portion of the judgment is extracted below.

> ***"Factors to be taken into consideration while dealing with applications for amendments***
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> *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;*

> *(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."*

22. Applying these tests to the properties at prayer clauses 1(f) and 1(q), we find that the amendment satisfies the standard laid down in both decisions. The amendment is confined to substituting the heading "Properties in Which the Plaintiff Has Received Share" with "Properties in which Mutation Entry has been made in name of Plaintiff", and the particulars, ownership and comments recorded against these two properties, including the mutation of shares in favour of the appellant and other legal heirs, remain wholly unaltered. This is not an amendment that introduces a new cause of action or defence, nor one that negates any admitted position of fact of the kind ***B.K. Narayana Pillai*** (supra) cautions against, nor, applying the factors given in ***Revajeetu Builders*** (supra), does it cause the appellant any prejudice that is not already addressed by the unchanged substance of the entries, or fundamentally alter the nature and character of the suit. Whether a mutation entry ultimately supports the claim of the appellant to a 1/7th share remains a matter for trial, and

the amendment neither forecloses nor prejudices that determination. Declining it would serve no purpose beyond compelling respondent nos.1 to 5 to defend a heading inconsistent with their own pleaded facts.

23. Insofar as the property at prayer clause 1(g) (4 kanal 11 marla) is concerned, the position is equally clear. The original written statement itself recorded the "Owner" of this property as "Defendant No.3 Sh. Sunil Kumar", with the chain of title traced through the sale deeds dated 06.09.1988 and 18.06.2012, and the amendment does not disturb this position in the least, but only relocates the sub-paragraph to a heading, "Properties owned by Defendant No.3 Mr. Sunil Kumar", that accurately reflects its own contents. No admission in favour of the appellant is withdrawn, for the written statement never, in substance, admitted that the appellant received a share in this specific property. Its earlier placement under the heading "Properties in Which the Plaintiff Has Received Share" was, on the face of the written statement's own particulars, an internal inconsistency, and correcting it is not the introduction of an inconsistent plea of the kind ***B.K. Narayana Pillai*** (supra) cautions against, but precisely the bona fide correction of an "error or mistake" which that judgment holds ought not to be refused. The contention of the appellant that this amendment displaces an unequivocal admission does not survive scrutiny of the original pleading itself.

24. The principal submission of the appellant that the original averments in paragraphs 13 and 14 constituted unequivocal admissions which could not be undone by amendment does not have any merit, for the reasons noted above which correctly describe the effect of the amendment permitted by the impugned order. ***B.K. Narayana Pillai*** (Supra) does recognise a qualification against amendments that withdraw a genuine admission made in the plaintiff's favour, but that qualification presupposes that an admission, properly so called, in fact exists and is sought to be withdrawn. Here, the entries themselves, both before and after the amendment, disclose an identical factual position, only the heading under which they were grouped has changed. No inconsistent or contradictory plea has been introduced, and no admitted fact stands negated. The reliance of the appellant on the principle against withdrawal of admissions is accordingly misplaced on the facts of this case.

25. The contention of the appellant regarding the manner in which the amendment was allowed, cannot be accepted as a ground to set aside the impugned order, as under the framework laid down in ***Revajeetu Builders*** (supra), the relevant enquiry is whether the application for amendment is bona fide, and whether any prejudice caused is compensable in money. There is nothing on record to suggest that the amendment was actuated by mala fides, as opposed to a genuine attempt to correct an internal inconsistency in the written statement, and no prejudice has been demonstrated that could not, in

any event, be met by appropriate directions as to costs. The apprehension of the appellant that the amendment forecloses her claim to a 1/7th share is, for the reasons discussed above, unfounded, since the substance of the entries relating to all three properties remains as it was, and her rights, if any, stand fully preserved for adjudication in the suit.

26. For the foregoing reasons, we find no infirmity in the order dated 20.02.2024 passed by the learned Single Judge allowing I.A. No.7919/2019. The amendment permitted thereby satisfies the tests laid down in ***B.K. Narayana Pillai***(supra) and in ***Revajeetu Builders***(supra) , does not withdraw any admission to the prejudice of the appellant, and does not alter the nature or character of the suit. The appeal, being devoid of merit, is accordingly dismissed. Pending application(s), if any, stand disposed of. There shall be no order as to costs.

VIVEK CHAUDHARY, J.

RENU BHATNAGAR, J.

SEPTEMBER 15 , 2026/my