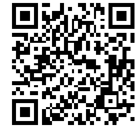

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on : 09.02.2026*
Date of decision: 25.03.2026

\+ FAO(OS) 3/2026 & CM APPL. 2934/2026

SMT. BINDU SHARMA .....Appellant

Through: Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Ms. Kashish Maheshwari and Ms. Babita Rawat, Advocates.

versus

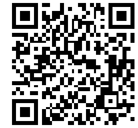
KAPIL SUD AND ANR. .....Respondents

Through: Ms. Tamali Wad, Senior Advocate with Mr. Mohit, Ms. Harshita, Mr. Karan, Mr. Varyam, Ms. Palak, Mr. SD Singh, Ms.Kamla, Mr. Sidharth, Mr. Manan, Advocates for Defendant No-1.

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

JUDGMENT

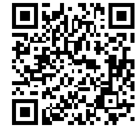
1. The present appeal has been preferred under Section 10 of the Delhi High Court Act, 1966, assailing the Order dated 24.11.2025 passed by the learned Single Judge in CS(OS) 84/2019 whereby I.A. No. 16481/2023 filed by Respondent No.2 under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC") was allowed and Respondent No.2 was permitted to amend his Written Statement by substantially altering the admissions earlier made therein.



2. The underlying suit has been instituted by the Appellant/Plaintiff seeking declaration, partition, permanent injunction and rendition of accounts in respect of property bearing No. M-9, Green Park Main, New Delhi measuring approximately 500 sq. yards ("Suit Property"). The Appellant and Respondents No.1 and 2 are the children and legal heirs of Late Major Satya Pal Sud and Late Smt. Promila Sud.

3. As per the plaint, the Suit Property was purchased by Late Major Satya Pal Sud/father of the Appellant in the name of Smt. Promila Sud/mother of the Appellant through a registered perpetual lease deed dated 13.12.1957, subsequently transferred to the name of Major Satya Pal Sud and was treated as part of the family estate. After the demise of Major Satya Pal Sud on 29.05.1967 intestate, the property devolved upon Smt. Promila Sud and the three children in equal shares. By mutual understanding reflected in affidavits dated 27.12.1990, the property was mutated exclusively in the name of Smt. Promila Sud with the understanding that the property would not be partitioned during her life time. Smt. Promila Sud passed away on 06.01.2016.

4. It is further pleaded that the disputes *inter se* the parties arose thereafter when Respondent No.1 asserted exclusive ownership over the Suit Property and began collecting rent from tenants. Consequently, when the Appellant served a legal notice dated 02.05.2016 on the Respondents, in reply thereof, the Respondents for the first time relied upon an alleged Will dated 25.11.2014 purportedly executed by Smt. Promila Sud in their favour. The Appellant contends that the said Will is forged and fabricated and has therefore filed the

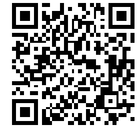


suit seeking a declaration to that effect along with consequential reliefs of partition and injunction.

5. Respondent No.2 filed his Written Statement on 03.05.2019 wherein he substantially supported the Appellant's case. In the said Written Statement, Respondent No.2 admitted that the property ought to be equally divided among the three siblings and expressed having no knowledge regarding the alleged Will dated 25.11.2014. Respondent No.2 also reiterated that the mother had desired equal distribution of the property amongst her children.

6. After a lapse of more than four years, Respondent No.2 filed I.A. No. 16481/2023 under Order VI Rule 17 CPC seeking amendment of the Written Statement. By way of the proposed amendments, Respondent No.2 sought to completely retract his earlier admissions and take a diametrically opposite stand by asserting that the Will dated 25.11.2014 is genuine and enforceable, that the Suit Property was the absolute self-acquired property of Smt. Promila Sud, and that the Appellant's suit deserves dismissal.

7. By the impugned order dated 26.11.2025, the learned Single Judge allowed the application holding that the trial had not commenced and that a liberal approach ought to be adopted while considering amendment of Written Statement. The Court further held that the proposed amendment merely clarifies the position of Respondent No.2 with respect to the Will dated 25.11.2014 and would assist in determining the real questions in controversy. Aggrieved thereof, the present Appeal has been preferred by the Appellant.



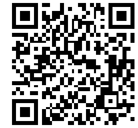
8. The impugned order was assailed by the Appellant contending that the application was a belated attempt to withdraw clear and categorical admissions made in the Written Statement and to realign with Respondent No.1. It was further contended that all material facts, including the alleged Will, were already within the knowledge of Respondent No.2 at the time of filing of the Written Statement and therefore the amendment was neither *bonafide* nor permissible in law.

9. We have heard the learned counsel for parties and perused the record.

10. The limited question which arises for consideration in the present appeal is whether the learned Single Judge was justified in permitting Respondent No.2 to amend his Written Statement so as to withdraw clear admissions and substitute an entirely contrary defence after a lapse of more than four years of the filing of the Written Statement.

11. The law governing the amendment of pleadings under Order VI Rule 17 CPC is well settled. While the power of amendment is wide and courts ordinarily adopt a liberal approach, such discretion is circumscribed by certain settled limitations. One of such restriction is that a party cannot ordinarily be permitted to withdraw clear and categorical admissions made in the pleadings, particularly when such admissions confer a valuable right upon the opposite party.

12. In ***Modi Spg. & Wvg. Mills Co. Ltd. v. Ladha Ram & Co.*, (1976) 4 SCC 320,** the Supreme Court authoritatively held that an amendment which

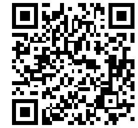


has the effect of displacing admissions made in the written statement cannot ordinarily be permitted. The relevant extract is reproduced as under:

> *"**10.** It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court."*

13. At the same time, it is equally settled that courts adopt a more liberal approach in permitting amendments to written statements as compared to amendments of the plaints as held in ***Baldev Singh & Ors. v. Manohar Singh & Ors.*, (2006) 6 SCC 498,** as below:

> *15. ……….. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate*



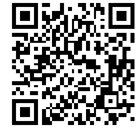
> *with same rigour in "the former than in the latter case."*

14. However, even in the context of written statements, the Supreme Court has repeatedly emphasized that mutually destructive or wholly inconsistent pleas which negate earlier admissions cannot be permitted as a matter of course as in case of ***Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors.*, (2007) 5 SCC 602,** as under:

> *"18. It is now well settled by various decisions of this Court as well as those by the High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one….."*

15. In ***Heeralal v. Kalyan Mal & Ors.*, (1998) 1 SCC 278 ,** the Supreme Court has as held under:

> *" 9. …………Even that apart, the said decision of two learned Judges of this Court runs counter to a decision of a Bench of three learned Judges of this Court in the case of Modi Spg. & Wvg. Mills Co. Ltd. v. Ladha Ram & Co. [(1976) 4 SCC 320 : (1977) 1 SCR 728] In that case Ray, C.J., speaking for the Bench had to consider the question whether the defendant can be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the plaintiff. It was held that such an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement cannot be allowed. If such amendments are allowed in the written statement the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. In that case a suit was filed by the plaintiff for*

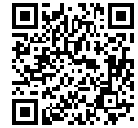


claiming a decree for Rs 1,30,000 against the defendants. The defendants in their written statement admitted that by virtue of an agreement dated 7-4-1967 the plaintiff worked as their stockist-cum-distributor. After three years the defendants by application under Order VI Rule 17 sought amendment of written statement by substituting paras 25 and 26 with a new paragraph in which they took the fresh plea that the plaintiff was mercantile agent-cum-purchaser, meaning thereby they sought to go behind their earlier admission that the plaintiff was stockist-cum-distributor. Such amendment was rejected by the trial court and the said rejection was affirmed by the High Court in revision. ***The said decision of the High Court was upheld by this Court by observing as aforesaid. This decision of a Bench of three learned Judges of this Court is a clear authority for the proposition that once the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice……***.*"*

(Emphasis supplied)

16. Similarly, in ***Revajeetu Builders & Developers v. Narayanaswamy & Sons & Ors.*****, (2009) 10 SCC 84 ,** the Supreme Court enunciated the aforesaid principle as below:

"64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."



17. Recently, the Supreme Court in ***LIC of India v. Sanjeev Builders Pvt. Ltd. & Ors.*** (2022) 16 SCC 1 has reiterated that an amendment should ordinarily be refused if:

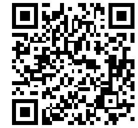
> *"71.3.2. To avoid multiplicity of proceedings, provided*
> *(a) the amendment does not result in injustice to the other side,*
> ***(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side****, and*
> *(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)."*
>
> *(Emphasis supplied)*

18. Tested on the aforesaid principles, the amendment sought by the Respondent No. 2 in the present case assumes a peculiar character. In the original Written Statement dated 03.05.2019, Respondent No. 2 stated as follows:

- Admitted that the Suit Property ought to be equally divided among the three siblings;
- Supported the Appellant's claim for partition;
- Expressed having no knowledge regarding the alleged Will dated 25.11.2014; and
- Reiterated that their mother intended equal distribution among the children.

19. By way of the amendment sought in 2023, the Respondent No.2 seeks to:

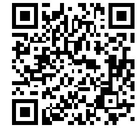
- Assert that the Will dated 25.11.2014 is genuine and valid;



- Claim that the Suit Property was the absolute self-acquired property of Smt. Promila Sud;
- Oppose the prayer for partition; and
- Seeks dismissal of the suit.

20. The proposed amendments, therefore, does not merely elaborate or clarify the defence, rather, it completely displaces the earlier admissions and substitute an entirely contrary case. The defence originally aligned with the Appellant and for the suit to be decreed; the amended defence aligns with the Respondent No. 1 and seeks dismissal of the suit. In effect, the proposed amendment results in withdrawal of unequivocal admissions regarding equal inheritance and the Appellant's entitlement to partition decree. Such admissions, once made in the Written Statement, constitute substantive evidence and create valuable rights in the favour of the Appellant/Plaintiff. Permitting their withdrawal through amendment would deprive the Appellant/Plaintiff of the legitimate advantage arising there from.

21. The explanation furnished by Respondent No. 2 that the earlier Written Statement came to be filed under a mistaken belief allegedly induced by the Appellant, does not inspire confidence and appears to be an afterthought. The record reveals that the alleged Will dated 25.11.2014, along with the attendant facts and circumstances, was well within the knowledge of Respondent No. 2 at the time of filing of the Written Statement in the year 2019. Significantly, the demise of their mother had occurred on 06.01.2016, nearly three years prior thereto, thereby affording ample opportunity to ascertain and take a considered

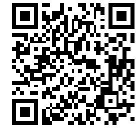


position. The belated attempt to resile from earlier pleadings, under the guise of mistake, is thus neither bona fide nor tenable. The proposed amendment, therefore, cannot be justified as a case of subsequent discovery of facts.

22. Furthermore, the delay of more than four years in seeking the amendment also assumes considerable significance. While mere delay, in isolation, may not be fatal, its impact cannot be overlooked where the proposed amendment seeks to withdraw clear admissions and fundamentally alter the stand earlier set up. In such circumstances, the delay assumes a material character, particularly when no satisfactory or convincing explanation has been furnished to justify the belated attempt.

23. The learned Single Judge appears to have proceeded primarily on the premise that amendments to written statements ought to be construed liberally, particularly where the trial has not yet commenced. While such considerations are, without doubt, relevant, the impugned order fails to adequately address the well-settled principle that admissions, once made, cannot be permitted to be withdrawn where they confer a substantive and valuable right upon the appellant/plaintiff. The exercise of discretion in allowing amendment, therefore, stands vitiated by the omission to consider this crucial limitation.

24. In the considered view of this Court, permitting Respondent No. 2 to completely retract his earlier admissions and set up an entirely new defence would seriously prejudice the Appellant and would efficiently rewrite the defence taken in the suit after several years of litigation.



25. Procedural rules undoubtedly exist to advance the cause of justice. However, they cannot be invoked to permit a party to resile from the solemn admissions made on oath and substitute a wholly inconsistent defence to the detriment of the appellant/plaintiff.

26. In view of the foregoing, the impugned order dated 24.11.2025 passed by the learned Single Judge in CS(OS) 84/2019 allowing I.A. No. 16481/2023 cannot be sustained and is, accordingly, set aside. The I.A. No. 16481/2023 filed by Respondent No. 2 under Order VI Rule 17 CPC stands dismissed. The present appeal is accordingly allowed.

27. The suit shall proceed on the basis of the original Written Statement filed by Respondent No.2 on 03.05.2019.

28. The parties are directed to appear before the learned Single Judge on the date already fixed, or on such date as may be notified by the Registry, for further proceedings in the suit.

29. The pending application(s), if any, also stands disposed of.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MARCH 25, 2026/kp/tr