



2026:DHC:7570



\$~47

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

Date of decision: 01st SEPTEMBER, 2026

IN THE MATTER OF:

CNR No. DLHC012541282017

+ **CS(OS) 451/2017 & I.A. 17567/2019, I.A. 11159/2022, I.A. 12455/2022, I.A. 19976/2023**

SUSHIL KUMAR KARWAL

.....Plaintiff

Through: Mr. Kuldeep Kumar, Advocate

versus

MRS. RITA KARWAL & ORS

.....Defendants

Through: Ms. Tamali Wad, Sr. Advocate with
Mr. Varyam Pandey, Advocate for D-
3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Plaintiff has filed the instant Suit for partition and permanent injunction with respect of the Suit Property bearing No.146, Sukhdev Vihar, New Delhi-110025 admeasuring area of 294.8 sq. yds. [**“Suit Property”**].
2. It is the case of the Plaintiff that the Plaintiff is in possession of the Suit Property for the last thirty (30) years and has also been regularly paying the house tax, electricity as well as water bills. As per the Plaintiff, the Suit Property was allotted to the mother of the Plaintiff, Late Smt. Prakash Wati by the Delhi Development Authority [**“DDA”**]. It is averred that the Suit Property was constructed with joint family funds in the year 1981 and since



then, the Plaintiff along with his mother has been in possession of the Suit Property.

3. It is stated that the mother of the Plaintiff passed away on 07.06.1994, leaving behind the Plaintiff and his elder brother, i.e., Late Dr. Shanti Swarup Karwal, who was the husband of Defendant No.1 and father of Defendant No.2, as her legal heirs. It is stated that Late Dr. Shanti Swarup Karwal along with his family, left to live in the United States of America in the year 1980.

4. It is the case of the Plaintiff that a Will was made by the Late Smt. Prakash Wati in the year 1987 regarding the Suit Property in favour of Dr. Shanti Swarup Karwal, on the condition that Dr. Shanti Swarup Karwal will not sell or alienate the Suit Property to any other person beside her sons, so long as she is alive and not even after her demise. It is stated that even though the Plaintiff was told regarding some other Will made by Late Smt. Prakash Wati, however, this other Will has never seen the light of the day.

5. It is stated that the Plaintiff and his elder brother, Late Dr. Shanti Swarup Karwal both had mutually and orally agreed that both the brothers would be the co-owners of the 50% share in the Suit Property. Thus, it is the case of the Plaintiff that an oral partition was done at the behest of Late Dr. Shanti Swarup Karwal, and the shares in the Suit Property have been determined by metes and bounds between the Plaintiff and Late Dr. Shanti Swarup Karwal, in the presence of the members of the family. It is stated that after the demise of the Plaintiff's mother, the Plaintiff was assured by Late Dr. Shanti Swarup Karwal that he would be given one-half share of the Plaintiff and had also given a No Objection/Undertaking to this effect.

6. It is stated that Dr. Shanti Swarup Karwal passed way on 27.01.2006,



leaving behind the Defendant No.1 and 2, whereafter the Plaintiff came to know that Late Dr. Shanti Swarup Karwal had entered into an Agreement to Sell and Purchase dated 22.12.2005 [**“ATS dated 22.12.2005”**], wherein it was stated that the Plaintiff has already relinquished his one-half share in favor of Dr. Shanti Swarup Karwal, which according to the Plaintiff, is not correct. Therefore, the present Suit has been filed by the Plaintiff on the ground that the Plaintiff is entitled to 50% of the share in the Suit Property.

7. During the pendency of the Suit, an Application being I.A. 653/2018 under Order I Rule 10 of the Code of Civil Procedure [**“CPC”**] was filed by Defendant No.3, Ashok Dang, for being impleaded in the array of parties *inter alia* on the following grounds:

- i. The Defendant No. 3 was the *bona fide* purchaser of the Suit Property and had entered into the ATS dated 22.12.2005 duly executed between Late Dr. Shanti Swarup Karwal, through his General Power of Attorney Holder, Sh. K.C. Bhatia. This fact was always in the Plaintiff's knowledge.
- ii. After the demise of Dr. Shanti Swarup Karwal, the Defendant No.3 had sent a notice on 19.08.2006 to Defendant No.1 and 2 for honoring the ATS dated 22.12.2005 by intimating the date when the parties would be present in the office of concerned Sub-Registrar for getting the sale deed executed/registered in the name of Defendant No.3. However, when Defendant No. 3 did not receive any response to the notice dated 19.08.2006 and learnt of the Defendants No. 1 and 2 trying to wriggle out of the ATS dated 22.12.2005 in view of the rising market prices of the Suit Property, the Defendant No. 3 filed a Suit being CS(OS)



2245/2006 before this Court seeking specific performance of the ATS dated 22.12.2005, whereby *vide* Order dated 05.12.2006, an *ex parte* ad-interim injunction was passed against the Defendants No. 1 and 2 thereby restraining them from transferring, selling, alienating, parting with possession of or encumbering any portion of the Suit Property till disposal of that Suit. Subsequently, *vide* the order dated 21.05.2007, the interim order dated 05.12.2006 was made absolute during the pendency of that Suit. Later, CS(OS) 2245/2006 came to be transferred to the Additional District Judge, Saket District Court, South-East District, Delhi and re-numbered as CS No. 9966 of 2016.

- iii. In CS(OS) 2245/2006 (CS No. 9966 of 2016), the Plaintiff filed an application under Order I Rule 10 of the CPC, which came to be dismissed as withdrawn by the Plaintiff himself on 09.02.2007.
- iv. The Plaintiff filed another Suit for partition being CS(OS) 546/2007 against the Defendants No. 1 and 2, though no objection regarding the ATS dated 22.12.2005 was contained therein. Ultimately, this suit was also dismissed as withdrawn on 30.10.2007, on the ground that an alleged compromise was arrived at between the parties therein.
- v. Subsequently, the Plaintiff appeared before the ADJ, Saket District Court in CS No. 9966 of 2016, and filed an application under Order I Rule 3 and Order I Rule 10(2), seeking to be impleaded as a Defendant in CS No. 9966 of 2016.



- vi. Shortly thereafter, the Plaintiff filed another suit being CS No. 52284/2016 before the ADJ, Saket District Court, seeking a decree of permanent and mandatory injunction from dispossession of the Suit Property. In this suit, the Defendant No. 3 filed an application under Order I Rule 10 of the CPC, which came to be allowed *vide* Order dated 14.09.2016 passed by the ADJ, Saket District Court.
 - vii. During the pendency of his own suit being CS No. 52284/2016 before the ADJ, Saket District Court, the Plaintiff approached this Court by way of the instant Suit, however, all the facts as stated hereinabove were concealed.
 - viii. It is further stated that a second application under Order I Rule 10 of the CPC filed by the Plaintiff was dismissed *vide* Order dated 24.11.2017 passed by the ADJ, Saket District Court in CS No. 9966/2016. The Order dated 24.11.2017 was challenged by the Plaintiff before this Court by way of a petition being CM(Main) 1374/2017 which also came to dismissed *vide* Order dated 21.11.2019 passed by this Court.
 - ix. Later, the second Suit being CS No.52284/2016 filed by the Plaintiff herein for injunction was dismissed *vide* Order dated 29.11.2017 passed by the ADJ, Saket District Court as being not maintainable under Order VII Rule 11(d) of the CPC.
8. I.A. 653/2018 filed by the Defendant No. 3, is an application under Order I Rule 10 of the CPC for impleadment, which was disposed of by the learned Joint Registrar *vide* the Order dated 13.02.2019, observing that the Defendant No.3 was a necessary party for deciding the real controversy



between the parties to the instant Suit. The learned Joint Registrar also observed that the impleadment of Defendant No. 3 was necessary in order to protect his interests. The essential observations of the learned Joint Registrar in the Order dated 13.02.2019 are reproduced as under:-

“Amended Memo of Parties be filed by plaintiff within two weeks. Pursuant to impleadment of applicant as defendant in the case, plaintiff is at liberty to amend the suit. The amended plaint, if any be filed by plaintiff within two weeks with advance copy to counsel for applicant.

IA stands disposed of accordingly.”

9. The above Order dated 13.02.2019 passed by the learned Joint Registrar was the subject matter of challenge in the Chamber Appeal bearing O.A. 54/2019 preferred by the Plaintiff herein. The said Chamber Appeal was dismissed by a Coordinate Bench of Court vide Order dated 11.09.2019. It is pertinent to note that while considering the Chamber Appeal, the Coordinate Bench of this Court noticed Paragraph No. 12 of the Plaint, which depicts that the Plaintiff had, on an earlier occasion also, approached this Court by filing a Suit for partition, which was ultimately withdrawn on the basis of compromise. Paragraph 12 of the Plaint which has been noted by the Coordinate Bench in the Order dated 11.09.2019 reads as under:-

“12. That the cause of action to file the present this suit firstly arose in favour of the plaintiff when after the death of his mother, the plaintiff had asked his brother Dr. Shanti Swarup Karwal to divide the suit property and to give him his 50% share but the brother of the plaintiff, despite of repeated request had not given the 50% share of the plaintiff in the suit property.



The cause of action has further arose after the death of Dr.Shanti Swarup Karwal in 2006 when the plaintiff had also asked the defendant to divide the suit property and give him his50% shares in the suit property but the defendant have also not paid any heed on the request of the plaintiff and are avoiding the partition of the suit property. It is again arose in 2007 when the plaintiff came to know about the agreement to sell in respect of the suit property, entered into between the attorney of late Dr. Shanti Swarup Karwal and one Mr. Ashok Dang, and thereafter a suit for partition was filed by the plaintiff in 2007before the Hon'ble High Court where a compromise had been taken place between the plaintiff and the defendants herein and even that is not in dispute by the proposed defendant also. Even the main person and beneficiary, Dr. Shanti Swarup Karwal and his wife and son have not objected and whispered about any Will. Nor they have relied upon any Will in question. The cause of action again arose on 01.06.2016 when the threats to go away, by leaving the property, was extended to the plaintiff by associates of so called purchaser of the suit property. The cause of action is still subsisting and continuing in favour of the plaintiff and against the defendants.”

10. Be that as it may, the fact remains that the Chamber Appeal filed by the Plaintiff against the impleadment of Defendant No. 3 and permitting the amendment of the Plaint, stood dismissed. That being so, an amended Plaint was also filed by the Plaintiff, and the same is on record. Though a written statement has been filed by the Defendant No. 3, which is also a matter of contention as to whether the same was filed within time or not, an application under Order VII Rule 11 of the CPC has been filed by the Defendants No. 3 *inter alia* on the ground that without there being an application under Order VI Rule 17 of the CPC, the amended Plaint could



not have been taken on record.

11. It is the contention of the learned Senior Counsel for Defendant No.3 that an amended Plaint could not have been filed, without taking permission from the Court, as the amended Plaint changes the entire nature of the Suit. It is submitted that the Court alone has power to permit such amendments to the Plaint.

12. The above contention of the learned Senior Counsel for the Defendant No. 3 is objected to by the learned Counsel for the Plaintiff, on the ground that the Defendant No.3 never challenged the Order dated 13.02.2019 passed by the learned Joint Registrar, which permitted the Plaintiff to file an amended Plaint, nor was any such objection raised in the when the Chamber Appeal being O.A. 54/2019 was being heard by the Coordinate Bench of this Court.

13. Reference by the learned Counsel for the Plaintiff is also made to the Chapter II Rule 3 of the Delhi High Court (Original Side) Rules, 2018 [**“DHC OS Rules”**] which gives the power to the Joint Registrar to consider an application to amend the plaint, petition, written statement, replication or subsequent proceedings where amendment sought is formal in nature. It is submitted by the learned Counsel for the Plaintiff that the plaint had to be amended in view of the impleadment of Defendant No.3.

14. The learned Counsel for the Plaintiff avers that in any event, the above challenge to the amended Plaint cannot be raised in an application under Order VII Rule 11 of the CPC, as such a challenge would not fall in any of the categories enumerated under Order VII Rule 11 of the CPC, for rejection of the plaint.

15. Heard learned Counsel for the parties and perused the material on



record.

16. Chapter II Rule 3(2) of the DHC OS Rules reads as under:-

“3. Powers of the Registrar.—

The powers of the Court, including the power to impose costs in relation to the following matters, may be exercised by the Registrar:

xxx

(2) Application to amend the plaint, petition, written statement, replication or subsequent proceedings where the amendment sought is formal;”

(emphasis supplied)

17. This Court is *prima facie* in agreement with the contention of the learned Counsel for the Plaintiff, that the objection taken by the learned Senior Counsel for the Defendant No. 3 cannot be considered within the ambit of Order VII Rule 11 of the CPC. But before considering the application under Order VII Rule 11 of the CPC filed by the Defendant No.3, this Court deems it fit to consider whether the learned Joint Registrar could have permitted the amendment of Plaint, while allowing an application under Order I Rule 10 of the CPC, wherein the amendment to the Plaint is of substantive nature that reliefs are being sought against Defendant No.3.

18. A perusal of the amended Plaint which has been filed by the Plaintiff shows that the Plaintiff has now prayed for a declaration that the Plaintiff is the absolute owner of the Suit Property on the basis of adverse possession, a prayer which was not made in the original Plaint. The amended Plaint also



seeks for a declaration that the unregistered ATS dated 22.12.2005 is a forged, fabricated and void document, as the Plaintiff has never relinquished his share in favor of his brother. The amended Plaint further seeks declaration that the general power of attorney dated 17.07.2004 executed by Dr. Shanti Swarup Karwal in favour of K.C. Bhatia, who entered into the power of attorney on behalf of Defendant No.3 as null and void as loss of enforceability by the death of Dr. Shanti Swarup Karwal and also for further orders. All these prayers were not sought for by the Plaintiff in the old Plaint. Rather, no prayer for declaration of any kind was sought in the Plaint as originally filed.

19. In the opinion of this Court, a perusal of Chapter II Rule 3 of the DHC OS Rules permits the learned Joint Registrar to only permit *inter alia* amendment(s) that are formal in nature, such as, filing of an amended memo of parties etc.

20. Order VI Rule 17 of the CPC specifically provides the manner in which pleadings can be amended. Order VI Rule 17 of the CPC is reproduced as under:-

“17. Amendment of pleadings.—

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter



before the commencement of trial.”

21. Reading of the wordings of Order VI Rule 17 of the CPC makes it clear that without an application under Order VI Rule 17 of the CPC, even the Court cannot permit amendment of pleadings, more so, when the amendment is substantial in nature where new reliefs are being sought. As such, when a Court itself does not have the power to permit the amendment of plaint without there being a formal application, the Joint Registrar surely cannot permit amendment of plaint without there being any application under Order VI Rule 17 of the CPC, that too when the plaint is being amended after parties are impleaded and specific reliefs are sought against the party who is newly under Order I Rule 10 of the CPC.

22. The Court has to, while examining an application under Order VI Rule 17 of the CPC apply its mind as to whether the amendment can be permitted at all or not, and whether the amendment would result in giving life to dead claims or changes the nature of the suit or that the Plaintiff is trying to go back on admission made in the plaint. An order permitting an application under Order VI Rule 17 of the CPC is not mechanical in nature and requires application of mind by a Court, as substantive rights of the parties are at stake, which have to be adjudicated after the plaint is amended and more particularly when amendment to the plaint dates back to the date of the filing of the suit.

23. It is trite law that amendment dates back to the filing of the Suit [Ref: Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393]. In fact, the Court cannot even exercise its inherent powers under Section 151 of the CPC to permit amendment of pleadings, without there being any application under Order



2026:DHC:7570



VI Rule 17 of the CPC, meaning thereby, that the pleadings cannot be allowed to be amended by this Court *suo motu*. Therefore, in the opinion of this Court, the amended Complaint filed by the Plaintiff pursuant to the Order dated 13.02.2019 passed by the learned Joint Registrar, cannot be taken on record *sans* an application under Order VI Rule 17 of the CPC.

24. Accordingly, the amended Complaint is returned to the Plaintiff, with liberty to the Plaintiff to move an application under Order VI Rule 17 of the CPC, seeking permission to amend the Complaint. The written statement filed by Defendant No.3 to the amended Complaint is also, as a natural consequence, returned.

25. In view of the foregoing findings, this Court is also inclined to dispose of the application under Order VII Rule 11 of the CPC, i.e., I.A. No. 17567/2019 filed by the Defendant No. 3 as having become infructuous. Needless to state, the Defendants would have the liberty to move a fresh application under Order VII Rule 11 of the CPC, when and if the Plaintiff's application under Order VI Rule 17 of the CPC is permitted by this Court and the amended Complaint is brought on record.

26. List on 14.12.2026.

SUBRAMONIUM PRASAD, J

SEPTEMBER 01, 2026

hsk/ap