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

Date of decision: 30th OCTOBER, 2025

IN THE MATTER OF:

+ **CS(OS) 1678/2012 & I.A. 10771/2012**

ANIL THAPAR

.....Plaintiff

Through: Mr. A.K. Singla, Senior Advocate with Mr. Deepak Rana, Mr. Akshit Sachdeva, Mr. Arun Kumar, Mr. Sahil Kumar, Mr Rohan Sehrawat Advocates.

versus

MAN SINGH THAPAR & ORSDefendants

Through: Mr. Preet Pal Singh, Ms. Tanupreet Kaur, Ms. Medha Navami, Advs

+ **CS(OS) 3208/2012 & I.A. 12077/2017**

KULDIP THAPAR

.....Plaintiff

Through: Mr. Preet Pal Singh, Ms. Tanupreet Kaur, Ms. Medha Navami, Advs

versus

ANIL THAPAR & ANR

.....Defendants

Through: Mr. A.K. Singla, Senior Advocate with Mr. Deepak Rana, Mr. Akshit Sachdeva, Mr. Arun Kumar, Mr. Sahil Kumar, Mr Rohan Sehrawat Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

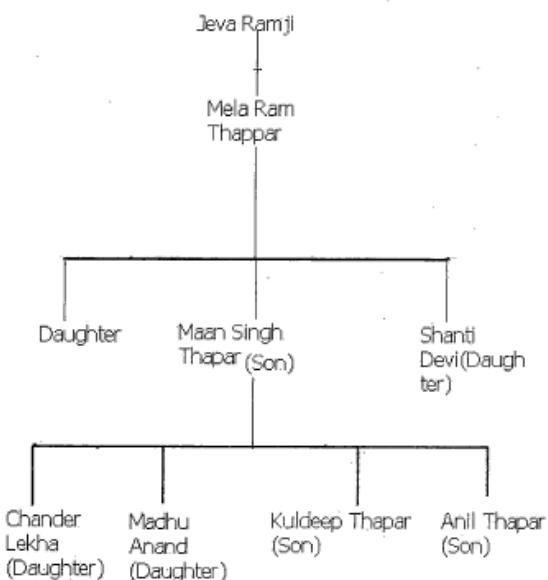


JUDGMENT (ORAL)

I.A. 21348/2022 & I.A. 5333/2023 in CS(OS) 1678/2012

1. I.A. 5333/2023 has been filed by Defendant No.4 under Order VI Rule 17 read with Section 151 CPC for amendment of written statement.
2. It is stated that Defendant No.1 and Defendant No.4 had filed a detailed written statement. The case of the Defendant is that the Property bearing E-8/2, Malviya Nagar, New Delhi – 110017, measuring 124 sq. yds., [“**Suit Property**”] is a self-acquired property of Late Man Singh Thapar, which has been purchased by him from his own retirement benefits and personal funds for Rs. 75,000/- by way of a registered Sale Deed dated 19.07.1980. It is stated that the construction of the said Suit Property was also made by Late Man Singh Thapar.
3. The present Suit is for declaration, partition, permanent and mandatory injunction. The genealogy tree reads as under:-

PEDGREE CHART



4. It is the case of the Plaintiff that the Defendant No. 1 is the father of the Plaintiff and Defendants No.2 to 4, while the Defendant No. 1 is the son



of Late Mela Ram Thapar. It is stated that the Plaintiff's father, Late Man Singh Thapar, inherited the property from the lineage of Late Jeva Ramji (great grandfather of the Plaintiff) and Late Mela Ram Thapar (grandfather of the Plaintiff).

5. It is stated that the Plaintiff being the fourth in the line of descent, has a pre-existing right as a grandson to the 1/5th share in the Suit Property of his father, Defendant No.1. It is the case of the Plaintiff that his ancestors were natives of Ludhiana, Punjab who have acquired various other properties as well.

6. It is stated that Defendant No.1 retired from the Ministry of Defence and decided to settle in Delhi permanently and after selling the family properties, he purchased the Suit Property and carried out the construction therein as well.

7. It is stated that since the Suit Property is purchased out of funds acquired from the sale of coparcenary properties, it is available for partition amongst the lineal descendants of Late Mela Ram Thapar, after his demise in the year 1945.

8. It is stated that Late Man Singh Thapar out of his love and affection, executed a registered Gift Deed dated 12.12.2011, thereby gifting the property to Kuldeep Thapar, i.e., the Defendant No.4 herein and since then, Defendant No.4 has become the sole and absolute owner of the Suit Property.

9. Defendant No.4 has filed the present application for amendment of Written Statement by adding the following paragraphs as preliminary objections to the original written statement:-

"10. That without prejudice to the case of the defendant no. 4 that the entire suit property was a self acquired property of Late Sh. Man Singh Thapar and



that the same has been gifted by him to the defendant no. 4 as per law, it is submitted that Sh. Man Singh Thapar who expired on 30.12.2018, has left behind his last and valid Registered Will dated 21st July 2009 bearing Registration No. 4,666 in additional Book No. 3 Volume No. 1,739 on Pages 53 to 55 registered on 21st July 2009 whereby he has bequeathed his entire estate absolutely and solely in favor of Defendant no. 4 only. ”

10. A perusal of the above paragraph shows that apart from contending that the Suit Property has been gifted to him by Late Man Singh Thapar, he had also left behind the Registered Will dated 21.07.2009.

11. Reply has been filed by the Plaintiff opposing the application for amendment of the Written Statement.

12. As regards the stage of trial, this Court notes that issues have been framed and the Plaintiff's evidence is going on.

13. The law relating to amendment of pleadings under Order VI Rule 17 of the CPC has been crystallized by the Apex Court in several cases. It is settled law that courts should have a liberal approach in allowing amendment of a pleadings, however the same cannot be allowed in every case. The Apex Court in Ganesh Prasad v. Rajeshwar Prasad & Ors, 2023 SCC OnLine SC 256, has held as under:

“33. There cannot be any doubt or dispute that the courts should be liberal in allowing applications for leave to amend pleadings but it is also well settled that the courts must bear in mind the statutory limitations brought about by reason of the Code of Civil Procedure (Amendment) Acts; the proviso appended to Order VI Rule 17 being one of them. In North Eastern Railway Administration, Gorakhpur v. Bhagwan Das reported in (2008) 8 SCC 511, the law has been laid down by this Court in the following terms : (SCC p. 517, para 16).



*“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* [(1990) 1 SCC 166].)”*

*34. In the case of *P.A. Jayalakshmi v. H. Saradha* reported in (2009) 14 SCC 525, the above observations were reiterated by this Court and in the light of the same, this Court in para 9 held as under:*

“9. By reason of the Code of Civil Procedure (Amendment) Act, 1976, measures have been taken for early disposal of the suits. In furtherance of the aforementioned parliamentary object, further amendments were carried out in the years 1999 and 2002. With a view to put an end to the practice of filing applications for amendments of pleadings belatedly, a proviso was added to Order 6 Rule 17 which reads as under:

“17. Amendment of pleadings.—The court may at any stage of the proceedings allow either party to alter or amend his pleading 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. ””

35. In *B.K. Narayana Pillai v. Parameswaran Pillai* reported in (2000) 1 SCC 712, this Court referred to the following passage from *A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation* reported in AIR 1967 SC 96 wherein, it was held as follows:—

“4. This Court in *A.K. Gupta & Sons Ltd. v. Damodar Valley Corp. [AIR 1967 SC 96 : (1966) 1 SCR 796]* held:

*“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal* [[L.R.] 19 Q.B. 394 : 56 LJ QB 621]. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : See *Charan Das v. Amir Khan* [AIR 1921 PC 50 : ILR 48 Cal 110] and *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.* [AIR 1957 SC 357 : 1957 SCR 438]*

*The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith* [[L.R.] 26 Ch. 700 : 53 LJ Ch 891 : 51 LT 729]) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended*



(Kisandas Rupchand v. Rachappa Vithoba Shilwant [ILR (1909) 33 Bom 644 : 11 Bom LR 1042] approved in Pirconda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363 : 1957 SCR 595]).

The expression ‘cause of action’ in the present context does not mean ‘every fact which it is material to be proved to entitle the plaintiff to succeed’ as was said in Cooke v. Gill [[L.R.] 8 C.P. 107 : 42 LJCP 98 : 28 LT 32] in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corp. Ltd. [[1962] 2 All ER 24 (CA)] and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words ‘new case’ have been understood to mean ‘new set of ideas’ : Dornan v. J.W. Ellis and Co. Ltd. [[1962] 1 All ER 303 (CA)] This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.”

Again in Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] this Court held : (SCC p. 399, para 22)

“The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court.”

“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.”

37. Thus, the Plaintiffs and Defendant are entitled to amend the plaint, written statement or file an additional written statement. It is, however, subject to an exception that by the proposed amendment, an opposite party should not be subject to injustice and that any admission made in favour of the other party is not but wrong. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that 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.

38. 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.”

14. In addition, the Apex Court in Life Insurance Corporation of India v. Sanjeev Builders Private Limited, (2022) 16 SCC 1, after analysing several case laws has summarised the law regarding amendment of pleadings as under:-



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

15. Applying the above law laid down by the Apex Court and in view of the fact that the amendment sought by the Defendant No. 4 to the Written Statement does not change the character of the Suit, this Court is inclined to permit the amendment of Written Statement as sought for by the Defendant No.4.

16. The amended Written Statement has already been filed. The same is taken on record. Replication thereto, if any, be filed within the time prescribed under the Delhi High Court (Original Side) Rules, 2018.

17. With these observations, I.A. 5333/2023 is disposed of.

18. List before learned Joint Registrar on 27.11.2025 for admission/denial of the Will.



2025:DHC:9806



19. List before Court on 29.01.2026 for framing of issues.
20. In the meantime, since the dispute is only between siblings, it is expected that both sides would sit together and try to arrive at an amicable solution, rather than spending time, money and energy on litigation and also re-establish family ties. The Suit is pending since 2012, it has only ended in increasing the acrimony between the siblings. As such, this Court trusts that the Counsels would make sincere endeavour to settle the disputes amicably.
21. It is open for both the Counsels to decide a name of a private Mediator on whom they can repose their confidence for settling the disputes.

SUBRAMONIUM PRASAD, J

OCTOBER 30, 2025

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