



\$~8

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

Judgment reserved on: 13.02.2024

Judgment pronounced on: 10.05.2024

+ **CS(OS) 289/2022 & I.A. 7971/2022, I.A. 7972/2022, I.A. 7973/2022, I.A. 7974/2022, I.A. 7975/2022, I.A. 7976/2022, I.A. 9506/2022, I.A. 13967/2022, I.A. 19558/2022, I.A. 19559/2022, I.A. 16052/2023, I.A. 24643/2023, I.A. 24644/2023**

VANDANA BATRA

..... Plaintiff

Through: Mr. YP Narula, Sr. Adv. with Ms. Tara Narula, Mr. S. Debabrata Reddy, Mr. Harshvardhan Jain, Mr. Anirudh Ramanathan, Advs.

versus

ANUPAM GUPTA & ANR.

..... Defendant

Through: Mr. Manish Vashisht, Sr. Adv. with Mr. Rikky Gupta, Ms. Ananya Singh, Ms. Harshita Nathkanj, Mr. Aman Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH. J**

I.A. 16426/2023

1. This is an application under Order VI Rule 17 r/w Section 151 CPC on behalf of defendant no. 1 for amendment of the written statement filed by defendant by no. 1 seeking amendments by incorporating certain additional paragraphs under the heading of preliminary objections of his written statement. The proposed amendments read as under:-



“7. That without prejudice to the fact that Late Sh. ML Gupta passed away leaving behind a WILL dated 27.12.2019. However, if this Court comes to a conclusion that Late Sh. ML Gupta dies intestate in that eventuality the following immovable properties may kindly also be partitioned between the Plaintiff and the Defendants in accordance with Law.

a. That Late Shri M.L. Gupta during his lifetime paid/transferred a total sum of Rs. 5,23,49, 700/- (Rupees Five Crores Twenty Three Lakhs Forty Nine Thousand Seven hundred only) to the Plaintiff and her family members including the sum of Rs 1.6 Crores as aforestated. The amounts transferred to the Plaintiff were credited to her Bank Accounts maintained with (i) Bank of Tokyo Mitsubishi Ltd (A/c No. 518518), (ii) Hong Kong & Shanghai Bank Corporation (A/c No. 003214442006), (iii) Bank of India (A/c No. 8875693077). The money transferred by Late Shri M.L. Gupta have been utilized for acquiring the following immoveable properties.

b. 141, Tower-A, Kalpatru Horizon, S.A Ahir Marg near Doordarshan Tower, Worli, Mumbai

That Late Sh. ML Gupta advanced a loan of Rs. 1.60 crores to the Plaintiff vide cheque no. 932166 dated 12.04.2005 drawn on Bank of Tokyo-Mitsubishi Ltd and paid into the Savings Bank Account of the Plaintiff bearing no. 518518 as maintained with Bank of Tokyo-Mitsubishi Ltd itself. The said amount was given to the Plaintiff for purchasing the above stated property. It is a fact which is known to entire family that the Plaintiff transferred the said amount to her husband who then purchased the above stated property by utilizing the said amount. It is also an admitted fact that the Plaintiff never returned the said loan amount to Late Sh. ML Gupta and the same is still standing in the Books of Late Sh. ML Gupta. This transaction being a loan extended to the Plaintiff on 09.04.2005 was duly declared and confirmed the to the Income Tax Department during the lifetime of Late Shri M.L. Gupta.



c. Flat No. 402, Adhishwar Apartments, 34 Firoz Shad Road, New Delhi-

The above stated property was purchased by Late Sh. M.L. Gupta in an auction conducted by the Income Tax Authorities on 16.12.1998. Late Sh. ML Gupta paid an amount of Rs.1 crore 15 lakhs ten thousand. Late Sh. ML Gupta deposited an amount of Rs. 29 lakhs 25 thousand on 16.12.1998 in the following manner:

S.no	Cheque No.	Amount	Dated	Drawn on
1	040696	28,75,000/-	16.12.1998	The Bank of Tokyo Mitsubishi Ltd.
2	040697	25,000/-	16.12.1998	The Bank of Tokyo Mitsubishi Ltd.
3	040698	25,000/-	16.12.1998	The Bank of Tokyo Mitsubishi Ltd.
	<i>Total</i>	29,25,000/-	(Rupees Twenty-nine Lacs Twenty-five Thousand Only)	

The balance sale consideration of Rs. 85,85,000/- was paid by Late Sh. ML Gupta vide pay order No. 056379 on 31.12.1999. In this manner, Sh. ML Gupta paid the entire sale consideration of the said



property. The possession of the said property always remained with Late Shri M.L. Gupta and thereupon the same is under actual possession of the Applicant/ Defendant No. 1.

That it is an admitted position that till date Income Tax Authorities have not executed the Conveyance Deed of the said property. However, it has come to the knowledge of the Defendant No.1 that Plaintiff is attempting to get the Conveyance Deed of the said property in her name to the exclusion of the Defendants.

d. E8-A first floor, Hauz Khas Main Market, New Delhi.

Late Shri M.L. Gupta had transferred a sum of Rs 1,76,00,000/- (Rupees One Crore Seventy Six Lakhs only) on 12.10.2007 to the Plaintiff by means of cheque no. 255806 drawn on HDFC Bank. The Plaintiff purchased the aforementioned property thereafter and the Sale Deed was executed in favour of the Plaintiff in March, 2009 after utilizing the funds provided by the father Late Shri M.L. Gupta and is therefore, is also one of the property purchased by Sh. M.L. Gupta from his own funds.

8. That it is submitted that the Plaintiff has intentionally not included the above stated properties in the present suit as she wanted to steal a march over the Defendants. The Plaintiff thus has not approached this Hon'ble Court with clean hands.

9. That it has decently come to the knowledge of Defendant No.1 that the Plaintiff is making inquiries from various property dealers and is attempting to sell the above stated properties. It is submitted that the Plaintiff cannot be permitted to dissipate the properties left by Late Sh. ML Gupta till such time the suit is pending disposal. That, without prejudice to the stand of the answering Defendant No. 1 that Late Shri M.L. Gupta left behind his Last Will dated 27.12.2019, the Plaintiff is further liable to account for these properties and same are also ultimately liable to be partitioned as forming part of estate of Late Shri M.L. Gupta."



2. The facts in the present suit are that the plaintiff and the defendants are children of Late Sh. M.L. Gupta. The plaintiff filed the abovesaid suit for partition stating that Late Sh. M.L. Gupta died intestate and the plaintiff is entitled to and seeking partition of her 1/3rd share in the properties and assets in the estate of Late Sh. M.L. Gupta.

3. The defendant no. 1 has objected to the captioned suit for partition on the ground that their father, i.e. Late Sh. M.L. Gupta, prior to his demise has already executed his last Will dated 27.12.2019 distributing all the assets left behind by him. It is also stated that the said Will was provided to the plaintiff prior to the filing of the suit and that the plaintiff was the largest beneficiary under the said Will.

4. The defendant no. 1, in the present application, states that the plaintiff has malafidely and intentionally not included some properties in the plaint which have been purchased by the father during his lifetime. The said act according to the defendant no. 1 is malafide and if the partition is proceeded without inclusion of these properties, it would result in partial partition and would therefore be not maintainable. The said averment has been made without prejudice to the fact that Late Sh. ML. Gupta has executed a will dated 27.12.2019.

5. The defendant no. 1 submits that the above amendments are necessary for adjudication of the present captioned suit between the parties. It is stated that no prejudice shall be caused to the plaintiff by the amendments sought since the suit is in nascent stage and the issues have not been framed yet. Further, the above properties have already been included in the Written Statement filed by defendant no. 2 under the heading of “Para-wise Reply.”



6. The learned senior counsel for the plaintiff opposes the present application firstly on account of limitation. It is stated that an application for amendment cannot be allowed on a date on which a fresh suit seeking the same relief would be barred by limitation. Reliance is placed on *Lumax Industries vs. DESU*, 1997 (41) DRJ 8, the operative portion reads as under:-

“7.3 In Munni Lal v. ORGIC Ltd., (1996) 1 SCC 90 a suit was filed for mere declaration without seeking consequential relief to which the plaintiff was entitled and yet he had not sought for. The suit was dismissed as being not maintainable under proviso to Section 34 of the Specific Relief Act. An application under Order 6 Rule 17 of the CPC seeking the consequential relief by amendment of pleadings was filed in appellate Court on a date by which the suit was barred by limitation. The application was rejected. Their Lordships held:—

“The alternative relief was available to be asked for when the suit was filed but not made. He cannot be permitted to amend the plaint after the suit was barred by limitation during the pendency of the proceeding in the appellate court or the second appellate Court.”

7.4 Thus, the law is well settled that a relief cannot be allowed to be added to the plaint by moving an application for amendment on a date on which a suit seeking that relief would be barred by limitation.

7. Reliance is further placed on *South Konkan Distilleries and Anr. Vs Prabhakar Gajanan Naik and Ors.* (2008) 14 SCC 632, the operative portion reads as under:-

“ 14. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion



as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.

...

27. Keeping the aforesaid findings made by us and also the findings arrived at by the courts below in the matter of exercise of discretion to reject the application for amendment of the written statement and the counterclaim in mind, the delay and laches on the part of the appellants to apply for amendment of the written statement and the counterclaim would be the relevant factor for rejecting the application for amendment of the pleadings. As noted herein earlier, there has been thirteen-and-a-half years delay in filing the application for amendment of the pleadings. Furthermore, in the application for amendment, the appellants had not given any explanation whatsoever for such delay. Under these circumstances, we do not find any reason to interfere with the orders of the courts below. In our view, in the facts and circumstances of the case, the courts below were perfectly justified in rejecting the prayer for amendment of the written statement and the counterclaim.”

8. Further, the learned senior counsel for the plaintiff opposes the proposed amendments on the ground that the properties intended to be included by virtue of the amendment are self-acquired properties of the plaintiff and her husband in the years of 1999, 2006 and 2009. The same has been stated to be admitted by the defendant no. 1 in the proposed amendments wherein it is stated that the father of the parties transferred money to the plaintiff through which the same were acquired. Therefore, in view of section 4 of the Benami Transactions (Prohibition) Act, 1988 and section 14 of the Hindu Succession Act, 1956, the present application is not maintainable. Reliance is placed on judgment of the Himachal Pradesh High



Court in *Chaudhary v Ajudhia*, MANU/HP/0100/2001 which states that that any property acquired by the Hindu female, irrespective of how acquired, becomes her absolute property and will be held by her as owner thereon.

The operative portion reads as under:-

*“10. It may be noticed that any property possessed by a Hindu female, irrespective of how it was acquired, becomes her absolute property after coming into force of the Act in view of the operation of Section 14(1) of the Act. Thus, restraint or limitations on the part of the Hindu female in respect of the property given to her as maintenance till her life and possessed by her in that capacity ceased. Under sub-section (1) of Section 14, a female inherits the property without any limitations. Sub-section (2) to Section 14 is exception to sub-section (1). Sub-section (1) applies where Hindu female acquires and possess the property in recognition of her preexisting right, whereas, sub-section (2) applies where Hindu female gets the property for the first time without any pre-existing rights over such property. The Apex Court in *Vaddeboyina Tulasamma and Ors. v. Veddeboyina Sessa Reddi (dead) by L.Rs. AIR 1977 Supreme Court 1944*, interpreting the scope of Section 14 (1) and (2) of the Act, noticed that sub-section (1) and Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance whether such property was possessed by her at the date of commencement of the Act or was subsequently acquired or possessed. In such a situation, female Hindu become the full owner of the property. Sub-section (2), it was observed, is in the nature of proviso or exception to sub-section (1) and it being an exception to a provision calculated to achieve a social purpose by bringing about change in the social and economic condition of a woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). Their Lordships further observed:*



...It cannot be interpreted in a manner which would rob subsection (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1).”

9. I have heard learned counsel for the parties.

10. The law relating to amendment of pleadings is well settled, amendments to pleadings are to be allowed liberally subject to certain limitations. The Hon’ble Supreme Court in its judgment in *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Anr*, 2022 SCC OnLine SC 1128 has held as under:-

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC 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 II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) 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 VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) 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 does 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).

- (iv) A prayer for amendment is generally required to be allowed unless
 - (i) 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,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or*
 - (iv) by the amendment, the other side loses a valid defence.**
- (v) 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.*
- (vi) 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.*
- (vii) 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.*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) 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.*
- (x) 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.*
- (xi) 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, 2022 SCC OnLine Del 1897)

11. Keeping the above broad principles in mind, I will now discuss the opposition to the application for amendment.

12. In a suit for partition every plaintiff is a defendant and every defendant is a plaintiff. The proposed amendments, i.e. seeking partition of additional three properties, are already forming part of the pleadings as the same are included in the written statement filed by defendant No. 2. The material paragraphs of the written statement of defendant no. 2 read as under:-

“G. It is humbly submitted that the Plaintiff and her husband owe debts to the score of nearly Rs. 22 Crores plus assets amounting to around Rs. 5 Crores of Late Mrs. Usha Gupta, the Plaintiff has usurped to the exclusion of the answering Defendant, which are wholly recoverable to the interest of the legal estate of Late Shri. M.L. Gupta the father of the Parties since these amounts are loans/ dowry/ illegal gratification, etc. extracted by her and her husband from her father as well as comprise of jewelry and assets belonging to the Late Mother of the Parties i.e., Late Smt. Usha Gupta whose entire assets were swiftly and stealthily carried off by the Plaintiff, upon her demise without ever consulting with or offering the share due to the interest of her brothers i.e., Defendant No. 1 and Defendant No.2, herein. It is further submitted that the Plaintiff has in Para 3 of the Plaint also purposefully excluded three properties



which she has acquired from loans extracted from her Late Fathers legal estate and which are recoverable against the said assets from her as well as her husband. It is also within the knowledge of the answering Defendant that the husband of the Plaintiff on several occasions deployed blackmailing tactics with his deceased father to extract money from him, in his as well as the Plaintiffs name which per legal terms would constitute the offence of Dowry.

.....

PARAWISE REPLY

...

3. The contents of Para 3 of the Plaint are denied as they are based upon whimsical interpretations of law and fact. It is clarified that all the assets, moveable as well as immoveable forming part of the Legal Estate of Late Shri M.L. Gupta were self-acquired properties during his lifetime and not inherited and/or formed part of any HUF. It is humbly submitted that, the real design of the Plaintiff is writ large from the purposive deletions made by her in terms of describing the properties forming part of the Parties Late Fathers Legal Estate, wherein she has fraudulently omitted three properties which she claims belong to her, without any basis in law or fact and the source of funding for such properties was the Late Shri. M.L. Gupta who has also dealt with the payments so made under the head of 'Loans' both due from the Plaintiff as well as Defendant No. 1 in his ITR returns. The correct list of assets (including the assets purposely omitted by the Plaintiff highlighted) is set out as follows:

IMMOVABLE ASSETS:

Delhi:

- i. A-8, Greater Kailash - I, New Delhi*
- ii. M-24, Greater Kailash - II, New Delhi*
- iii. M-225, Greater Kailash - II, New Delhi*
- iv. G-14, Hauz Khas, New Delhi*
- v. GF-04, Chiranjeevi Tower, 43, Nehru Place, New Delhi*
- vi. **E8-A, First Floor, Hauz Khas Main Market, New Delhi***



vii. **Flat-408, Adhishwar Apartments, 34 Feroz Shah Road, New Delhi**

Mumbai:

- i. Flat No, 215, Maker Chamber V, Nariman Point, Mumbai
- ii. Shop No.1&2 (GF), Rokadia, Landmark Cooperative Housing Society Ltd., Vile Parle (E), Mumbai
- iii. **141, Tower A, Kalptaru Horizon, S K Ahire Marg, Near Doordarshan Worli, Mumbai”**

[Unknown and Hidden Properties, Investments/F.D.'s,/Insurance and Recurring Deposit Schemes, etc. made by diverting funds from Late Shri. M.L. Gupta by the Plaintiff for which she must account including FD's in her name which are converted from the assets of Late Shri. M.L. Gupta and which she has concealed from this Hon'ble Court.]

[Jewellery and other moveables of Late Smt. Usha Gupta usurped and swiftly removed by the Plaintiff without consent of the answering Defendant amounting to Rs. 5 Crores (as estimated)]

Therefore, the Plaintiff has not approached this Hon'ble Court with clean hands and has further attempted to avoid answering for the legally recoverable debts that she owes towards the legal estate of her deceased father. Moreso, the Plaintiff also needs to be made answerable for the jewelry and other assets she alone, to the exclusion of Defendant No.1 and No.2 removed from her late Mother, Late Mrs. Usha Gupta's lockers as well as share her Last Will and Testament which apart from her no one seems to have seen light of. It is humbly submitted, without prejudice, that the same Plaintiff was willing to execute a 'Family Settlement' based in verbatim on the Last Will and Testament of her father with the remaining Parties however, based upon her inability to pressurize and get her way with the answering Defendant, into forcibly selling her his share of the property located at Hauz Khas, she has now



resorted to filing the present colorable suit which is without any cause of action.”

13. A perusal of the written statement of the defendant No.2 shows that the amendments sought to be incorporated in the written statement of the defendant No.1 in the present application, have already been taken in the written statement of the defendant No.2. Therefore, there is no material irregularity that the defendant no. 1 is seeking to introduce by way of the proposed amendments. No prejudice shall be caused to the plaintiff if the amendment as prayed for is allowed since in a suit for partition, the pleadings of both of the defendants will have to be read and dealt with.

14. The learned senior counsel for the plaintiff states that the three properties namely, (a) Flat-402, Adhishwar Apartments, 34 Firoz Shah Road, New Delhi 141, (b) 141, Tower A, Kalpatru Horizon, SA Ahire Marg, Near Doordarshan Worli, Mumbai and (c) E8-A, First Floor, Hauz Khas Main Market, New Delhi, cannot be allowed to be included in the pool of properties for partition on account of being time barred claims since the properties were acquired by the plaintiff in the years of 1999, 2006 and 2009.

15. Though there may be some merit in the argument of the learned senior counsel for the plaintiff but in order to reject the present amendment application, this court will have to come to a finding that the properties cannot be included in the common pool for partition since challenge to the same is barred by the law of limitation.

16. By doing so, this court while deciding an amendment application under Order VI Rule 17, CPC filed by one defendant, i.e. defendant no. 1,



by implication would be adjudicating upon the merits of averments made in the written statement of defendant No. 2 in a summary manner. This is impermissible. This court while deciding an application for amendment under Order VI Rule 17 CPC cannot decide the merits of averments made in the written statement of defendant no. 2 without hearing defendant no. 2.

17. In addition, the Hon'ble Supreme Court in *Vineet Kumar v. Mangal Sain Wadhera*, (1984) 3 SCC 352 held as under:-

“16. Normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation.....”

18. In view of the above judgment, since the averments with regard to partition of the above-mentioned three properties are already on record in the written statement of defendant no. 2, the amendment/inclusion of the same in the written statement of the defendant no. 1 should be permitted.

19. Further, the Hon'ble Supreme Court in *Raghu Thilak D. John v S. Rayappan and Ors.*, (2001) 2 SCC 472 held that the plea that the relief sought to be added by way of the amendment is barred by limitation, can be made subject matter of the dispute and the amendment shall be permitted to be allowed to minimize litigation. It reads as under:-

“5. After referring to the judgments in Charan Das v. Amir Khan [AIR 1921 PC 50 : ILR 48 Cal 110] , L.J. Leach & Co. Ltd. v. Jardine Skinner & Co. [AIR 1957 SC 357 : 1957 SCR 438] , Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393], Ganesh Trading Co. v. Moji Ram [(1978) 2 SCC 91] and various other authorities, this Court in B.K. Narayana Pillai v. Parameswaran Pillai [(2000) 1



SCC 712 : JT (1999) 10 SC 61] held:

“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.”

6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.

20. The learned senior counsel for the plaintiff further opposes the proposed amendments on the ground that the same are hit by the Benami Transactions (Prohibition) Act, 1988 and the Hindu Succession Act, 1956.

21. The learned senior counsel for the defendant no. 1 states that the property, i.e. M-225, Greater Kailash, New Delhi, which is sought to be



partitioned by the plaintiff is in the name of defendant no. 1. The same was acquired by defendant no. 1 by means of a registered sale deed in 1995. If properties belonging to the plaintiff sought to be partitioned by virtue of the proposed amendments are hit by Benami Transactions (Prohibition) Act, 1988 and the Hindu Succession Act, 1956 and cannot be included then it does it not lie upon the plaintiff to include the property belonging to the defendant no. 1, i.e. M-225, Greater Kailash, New Delhi. I find merit in the submission of the learned senior counsel for defendant no. 1 and on the same analogy, since the property of the defendant no. 1 forms part of the properties to be partitioned, the inclusion of the three properties which stand in the name of plaintiff cannot at this stage be excluded.

22. I also find force in the submission of the learned senior counsel for defendant no. 1 that additionally the properties sought to be included were purchased when the daughter, i.e. the plaintiff, was unmarried, hence the bar under section 4 of the Benami Transactions (Prohibition) Act, 1988 will not be applicable as the transactions were pre-amendment of the Benami Transactions (Prohibition) Act, 1988.

23. The court at this stage of deciding an application for amendment of written statement is not required to consider the merits of the proposed amendment. It is a settled principle in law that the courts are to be liberal with respect to amendments of pleadings, more so when amendment is sought of the written statement than that of the plaint. Reliance is placed upon the dicta of the Hon'ble Supreme Court in *Sushil Kumar Jain vs Manoj Kumar*, (2009) 14 SCC 38. It reads as under:-

“13. At this stage, we may remind ourselves that law 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.

“15. ... 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.”

(See *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498 : AIR 2006 SC 2832] , SCC p. 504, para 15.) Similar view has also been expressed in *Usha Balashaheb Swami v. Kiran Appaso Swami* [(2007) 5 SCC 602 : AIR 2007 SC 1663] .

14. It is equally well settled that (SCC p. 609, para 22) in the case of an amendment of a written statement,

“the courts would be more liberal in allowing than that of a plaintiff as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed”.

24. At the cost of repetition, the three properties as sought to be included are already on record and included in the written statement of defendant no. 2. The court at a subsequent stage may frame a preliminary issue on the grounds raised by the parties with respect to the three properties and may decide the same after hearing the parties.

25. In addition, the judgment relied upon by the plaintiff in *South Konkan Distilleries (supra)*, the Hon’ble Supreme Court held that the allowing/disallowing amendments of pleadings is an exercise of discretion, if required in the interest of justice. It observed in that case that the amendment was sought after thirteen and a half years and could not be permitted in the facts of the case. In the present case, the application for amendment is filed at a nascent stage, the issues are yet to be framed and there is no inordinate delay. The above judgment is not applicable to the



facts of the present case. The Hon'ble Supreme Court in *Sushil Kumar Jain (supra)* had also allowed the amendment application at a similar stage in proceedings. It reads as under:-

“20. In view of the aforesaid decision and in view of the admitted fact that not even the issues have yet been framed, documents have not yet been filed, evidence has not yet been adduced, we are of the view that the proviso to Order 6 Rule 17 CPC has no manner of application as the trial has not yet commenced.”

26. Additionally, the judgment of *Lumax (supra)* is also distinguishable since in the said case amendment of plaint was sought and the court observed that the plaintiff is attempting to change the relief sought in the suit. As already observed, no such attempt has been made in the present case, the proposed amendments already form part of the pleadings, i.e. the written statement of defendant no. 2.

27. For the said reasons, the present application seeking amendments to the written statement of defendant no. 1 is allowed.

28. The amended written statement be filed within two weeks from today.

29. The plaintiff is at liberty to raise all its objections/pleadings in its replication to the amended written statement within four weeks thereafter.

CS(OS) 289/2022 & I.A. 7971/2022, I.A. 7972/2022, I.A. 7973/2022, I.A. 7974/2022, I.A. 7975/2022, I.A. 7976/2022, I.A. 9506/2022, I.A. 13967/2022, I.A. 19558/2022, I.A. 19559/2022, I.A. 16052/2023, I.A. 24643/2023, I.A. 24644/2023

30. List before Joint Registrar on 30.05.2024.

MAY 10th, 2024/DJ

JASMEET SINGH, J
[Click here to check corrigendum, if any](#)