(2010) 08 DEL CK 0325

Delhi High Court

Case No: CM (M) 930 of 2009 and CMs 4253-54 and 6463/08

Mohit Kumar		APPELLANT
	Vs	
Himalayan Institute Hospital Trust		RESPONDENT

Date of Decision: Aug. 31, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 16, Order 6 Rule 17, Order 7 Rule 11
- Criminal Procedure Code, 1973 (CrPC) - Section 145, 482

Citation: (2010) 172 DLT 716 : (2010) 119 DRJ 285 : (2011) 162 PLR 24

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Party in Person, for the Appellant; Jayant Bhushan Sanjeev Aggarwal and Gautam Talukdar, for the Respondent

Final Decision: Allowed

Judgement

S. Muralidhar, J.

The Petitioner has challenged an order dated 28th November 2007 passed by the learned Additional District Judge (''ADJ'') allowing an application filed by the Respondent/plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (''CPC'') to permit an amendment in the plaint in OS No. 231 of 2003 (renumbered as OS No. 280 of 2005). The Petitioner has also challenged the subsequent order dated 26th February 2008 passed by the learned ADJ declining to recall the order dated 28th November 2007 as well as an order dated 28th February 2008 directing the framing of the issues. An order dated 3rd December 2007 taking on record the amended plaint and fixing the matter for admission/denial of the documents and for framing of issues has also been challenged.

2. The above suit OS No. 231 of 2003 (renumbered as OS No. 280 of 2005) was originally filed in this Court by the Respondent/plaintiff Society (''Society'') for

"declaration, recovery of possession, mesne profits and damages." The averments in the plaint, which was filed on 7th January 2003, was that the Society was having its administrative office at 704, Sarvpriya Apartments, Sarvpriya Vihar, New Delhi-110016 (''suit property''). The suit was stated to have been filed on behalf of the Society by its Manager Shri M.K. Singh who, it was claimed, was duly authorised by the competent authority of the Society to institute the suit.

3. Para 2 and 3 of the plaint which are important for the present proceedings read as under:

2. That, the plaintiff society was founded and constituted by His Holiness Late Swami Rama, who renounced his family and worldly life and dedicated himself for the benefit and upliftment of the people at large. H.H. Late Swami Rama also remained at the highest seat of spiritualism in Hindu religion i.e. "The Jagatguru Shankaracharya" of Southern India. In the above context H.H. Late Swami Rama had attained Sainthood.

3. That the suit property was purchased by H.H. Late Swami Rama alias Brij Kishor Kumar in the year 1986, while he was engaged in the process of the establishment of his spiritual and social institutions for the purpose of having a center and Head Quarter for the above activities in Delhi for the general public welfare. Accordingly, at the time of formation and constitution of the plaintiff society in the year 1989, H.H. Late Swami Rama duly declared the Suit property as the Administrative office of the plaintiff society and continues to be so.

4. In paras 5 and 6 of the plaint, it is stated as under:

5. That, on 9-4-1996, upon establishing the entire infrastructure, hospital and medical institute, H.H. Late Swami Rama executed a registered will by way of which he dedicated and bequeathed all the assets and properties in his name to the plaintiff-society. He appointed Dr. Dato Mohan Swami, one of his disciples as the executor of the said "will" and by which all the assets including the suit property were also bequeathed to the society.

6. That, at the time of the execution of the said will H.H. Late Sh. Swami Rama also delivered the original title of the deed of the suit property to the plaintiff society through executor appointed in terms of the said "will" Dr. Dato Mohan Swami. The same was kept in the custody of the society office at Dehradun and continues to remain so.

5. The plaint proceeds to state that the Defendant (the Petitioner herein) has no right, title or interest in the suit premises, nor he enjoyed any right of occupation or possession thereof. Late Shri Swami Rama expired on 13th November 1996 at Dehradun. Claiming that a Will dated 9th August 1996 had been left by Late Shri Swami Rama, a probate case No. 41 of 1997 was filed on 26th March 1997 in the Court of District Judge, Dehradun by Shri Dato Mohan Swami, an executor named in

the will of Late Shri Swami Rama. The Petitioner also filed a petition for grant of letters of administration being Testamentary Case No. 1 of 2004 in the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow questioning the alleged Will dated 9th April 1996. He laid claim to the suit property on the basis of intestate succession. It is stated that the probate petition has since been consolidated with the Testamentary Case and registered as Testamentary Case No. 3 of 2003 by an order of the Supreme Court. The cases pending in the High Court of Delhi as well as High Court of Uttaranchal are stated to have been transferred and are pending before the High Court of Allahabad.

6. It is stated that the Petitioner has also filed a separate suit being OS No. 865 of 1997 in the High Court of Judicature at Allahabad questioning the authority of the office bearers and members of the Respondent/Society. The said suit is also stated to have been consolidated with the two Testamentary Cases in the same High Court. Another suit being OS No. 20 of 1999 is stated to have been filed by the Petitioner against the Society in respect of the suit property.

7. According to the Society, on 6th February 1999 the suit property was locked and the key was handed over to the Police and a kalandara was prepared with the report forwarded for action u/s 145 of the Code of Criminal Procedure, 1973 (''CrPC''). On 11th February 1999 an ex-parte interim status quo order was passed by the Civil Court in OS No. 20 of 1999. The Society appears to have filed an FIR against the Petitioner at Police Station Malviya Nagar alleging trespass in the suit property. However, a petition filed by the Petitioner u/s 482 Cr. PC was allowed by this Court on 30th September 2003. The FIR lodged by the Society and the proceedings consequent thereto were quashed on the ground that the issue as to ownership of the suit property were sub-judice before the Civil Court in the above suits. It was observed that the question as to the possession of the suit property would be decided by the Sub Divisional Magistrate (''SDM'') in the proceedings u/s 145 Cr. PC which were then pending disposal.

8. Thereafter on 8th February 2007, this Court disposed of Criminal Miscellaneous Petition No. 1978 of 2006 filed by the Petitioner herein and dropped the proceedings u/s 145 Cr. PC with a direction that the civil suit filed by the Petitioner and the suit for recovery of possession filed by the Society shall be heard and decided together by the learned ADJ on merits within six months. The parties were given liberty to call and summon the record of the SDM for the purpose of evidence before the learned ADJ.

9. On 17th March 2004, an application was filed by the Petitioner seeking to strike-off certain pleadings from the plaint in the main suit. This application was dismissed by the learned ADJ on 26th April 2004. Thereafter, on 3rd August 2004 the learned ADJ dismissed an application filed by the Petitioner on 14th May 2004 under Order VII Rule 11 CPC for rejection of the plaint. On 31st August 2004, the Petitioner filed CM (Main) No. 1155 of 2004 in this Court seeking to challenge the order dated 26th

April 2004 passed by the trial court dismissing the Petitioner''s application under Order VI Rule 16 CPC. Simultaneously, the Petitioner also filed Civil Revision Petition C.R.P. No. 403 of 2004 to challenge the order dated 3rd August 2004 passed by the Trial Court dismissing the Petitioner''s application under Order VII Rule 11 CPC.

10. On 2nd September 2004, this Court while directing notice to issue in C.R.P. No. 403 of 2004 stayed the further proceedings in the suit O.S. 231 of 2003 (renumbered as Suit No. 280 of 2005). On the same day, CM (Main) 1151 of 2004 was dismissed as withdrawn.

11. When C.R.P. 403 of 2004 was taken up for hearing before this Court on 23rd August 2007, the counsel for the Society made a statement before the Court that the Society would not be claiming relief in the suit merely on the basis of the Will but on other grounds. The order dated 23rd August 2007 passed by this Court in C.R.P. No. 403 of 2004 reads as under:

23.08.2007

Present: Mr. Mohit Kumar, Revisionist in person.
Mr. Sanjeev Aggarwal for the respondent.

CM_3145/2007 in CRP No. 403/2004

Today during the course of hearing the argument which was put forth with lot of force by the petitioner was that respondent-plaintiff is claiming relief of declaration and possession of suit property on the basis of Will of the deceased father of the petitioner and in the plaint itself it having been pleaded that a probate petition was pending in the probate Court in the Lucknow Bench of the Allahabad High Court the plaint should have been rejected under Order VII Rule 11 CPC based on its averment made in the plaint itself since the said averment ousts the jurisdiction of the Civil Court to entertain any such suit during the pendency of Probate petition. This legal point was seriously refuted by the learned Counsel for the respondent.

However, during the course of hearing learned Counsel for the respondent made a submission that respondent was not claiming the relief in the suit merely on the basis of Will in question but he had some other grounds also to support his claim for the relief of declaration and possession and therefore in order to avoid any further delay in the disposal of the suit the respondent would not seek to establish its claim relying upon the Will in question and would proceed with his suit on the basis of other grounds taken in the plaint and would be establishing those grounds to seek the decree prayed for.

In view of this submission having been made by learned Counsel for the respondent, the petitioner who happens to be a practising Advocate, submits that now he has no grievance as far as this aspect is concerned and he would withdraw this revision petition.

The petitioner also says that he has already filed his written statement and he would, however, be resisting the claim to respondent-plaintiff on the other grounds as well which he may seek to establish for the reliefs claimed by him. Needless to say that the petitioner would be at liberty to maintain his stand on all the pleas taken by him in his written statement and withdrawal of this Revision Petition would not be taken as his having conceded to any of the other grounds of claim taken up By the respondent - plaintiff in the suit.

This petition accordingly stands withdrawn.

August 23, 2007 Sd-
Rp P.K. Bhasin, J

12. Thereafter on 23rd November 2007, the Society filed an application under Order VI Rule 17 CPC seeking to amend the plaint. Paras 5 and 6 of the said application are relevant in the present proceedings and read as under:

5. That during the aforesaid period of the suspension of the suit, the ancillary proceedings in the matter related to the same issue in regard to the suit premises and the subject matter of the suit with subsequent events have taken place. Since the suit itself contains averments with respect to the said ancillary proceedings and facts, the subsequent developments and the status thereof are necessary to be incorporated in the plaint so that the suit is decided in light of its true perspective.

6. That in terms of the order dated 23.08.2007, the present suit is not to be pressed and relied upon the proof of the Will dated 09.04.1996 since the probate thereof are independent to the present proceedings of this suit, the plaintiff is only pressing for the other independent grounds of the suit for the relief prayed in the suit. The facts as regard to the other grounds which are already pleaded in the plaint, but requires more explicit details and which could not be mentioned in the plaint earlier since the factum of Will was also pleaded in the plaint and the details regarding the dedication of the suit property could not be explicitly stated as the facts remained and the same are necessary for the disposal of the suit and the issues on their true merits.

13. Thereafter in para 7 (i) of the application, the plaintiff society sought to insert para 3A after para 3 to the following effect:

3A. That in confirmation to the dedication and transfer of the rights of the suit premises in favour of the plaintiff society, His Holiness Late Swami Rama executed and delivered the letter dated 07.10.1993 to Sh. Narinder Mohan, the then secretary of the plaintiff society. The plaintiff society has been taking care of the maintenance of the suit property by making the payments towards its maintenance charges. The office of the society remained functional at the suit premises until the defendant forcibly occupied the same by act of trespassing.

14. The Petitioner also sought to insert para 21A which basically was a narration of the lodging of the FIR, its quashing by this Court on 30th September 2003 and of dropping of the proceedings u/s 145 Cr. PC by this Court by an order dated 8th February 2007.

15. In para 8 to the application, it was stated as under:

8. That the above amendments in the pleadings does not constitute any fresh cause of action or issue in the matter and is only of the explicit nature and to bring on record the subsequent facts in the matter in light of the fact that the suit proceedings remained stayed for more than three years due to the stay granted by the Hon''ble High Court as stated above and further in light of the fact that the grounds as to the rights of the plaintiff which have already been pleaded in the plaint but in terms of the order dated 23.08.2007 by the Hon''ble Delhi High Court since the ground relied on the Will dated 09.04.1996 is not to be pressed, the other ground already pleaded requires explicit detail for proper appraisal of the matter in controversy.

16. The Petitioner opposed the above application by filing the reply pointing out that the Society was setting up a new case and seeking to introduce a document after almost 5 years of filing the suit. It was specifically pleaded as under:

It is very humbly submitted that new facts and new document have been introduced after almost 5 years from the filing of the suit.

Otherwise also, if the plea and averments of the confirmation of dedication and transfer of rights of the suit premises in favour of the plaintiff society as given in the para No. 7 (i) 3 A, of the present application are incorporated in the plaint by way of amendment, then it would amount to setting up a new cause of action because as per the original plaint the title of the suit property vested with the society on 13-11-1996, the date of death of the owner, Sri. Swami Rama and now as per the new case of transfer inter vivos, Sri. Swami Rama''s title to the suit property had extinguished on 07-10-1993 and the same was vested on 07-10-1993 in the society, much prior to even execution of the perpetual sub-least & conveyance deed in favour of the owner i.e. on 18-02-1994.

It is very humbly submitted that substitution of cause of action in not allowed by way of amendment in the plaint. Furthermore, a case inconsistent to the original plea of ownership of Sri. Swami Rama and the document dated 18-02-1994 would be introduced by way of amendment which is not allowed under the law.

17. As regards the amendment by way of para 21A, it was submitted that it would amount to pleading evidence by way of amendment which was not permissible under law.

18. By the impugned order dated 28th November 2007, after noticing the rival contentions, the learned ADJ observed:

So in para 23 it is specifically mentioned that the dedication was in the year 1989 itself and the argument by the defendant that it was by way of Will as mentioned in para 5 of the plaint cannot be appreciated. Since their dedication as pleaded by the plaintiff, the effect whereof is not to be looked into at the time of deciding the application under Order VI Rule 17 CPC, the factum of pleading of letter dated 7.10.1993 and that it is the society who is maintaining the property after 89 will be only by way of explanation and cannot amount to addition of new facts.

19. As regard the amendment by introducing the para 21A, it was observed that "As such the pleadings of fact is a different thing and what is the value of the evidence to be attached is to be looked into at the stage of evidence but since the facts are subsequent events, same can be pleaded. Since the evidentiary value will be seen in terms of the order of the Hon''ble High Court"

20. This Court heard the submissions of Mr. Mohit Kumar, the Petitioner who appeared in person and Mr. Jayant Bhushan, learned Senior counsel appearing for the Society. Mr. Mohit Kumar submitted that the learned ADJ erred in not appreciating that there was no case made out by the Society to justify seeking to amend the plaint nearly 5 years after the suit was filed. He submitted that after having given up its plea on the basis of the Will before this Court in CRP No. 403 of 2004 filed by the Petitioner, the Society was now trying to set up a new case on the basis of transfer inter vivos. This was a case completely different from that which was set up in the original plaint. He referred to the inconsistent pleas taken repeatedly by the plaintiff in these very proceedings. In para 5 of the plaint, it was stated that the dedication was supposed to be made by way of a Will. Then in para 25, the valuation was made in accordance with the Will. In the reply dated 23rd July 2004 to the Petitioner''s application under Order VII Rule 11 CPC, in para 9 it was contended that the Society was not relying upon only on the Will dated 9th April 1996 but had an independent and separate cause of action. Then before this Court in the C.R.P. 403 of 2004, as recorded in the order dated 23rd August 2007 by this Court, the Society gave up any claim on the basis of the Will. In the list of dates filed with the reply to the present petition , the Society has against the narration for the date 13th November 1996 stated that "the properties although purchased by the Society funds and bequeathed in favour of the Society but in the name of His Holiness Late Dr. Swami Rama." In other words, the plea of benami has now been set up for the first time by the Society. It is further pointed out that the suit property figured in the schedule of properties annexed to the Probate Petition, which was relied upon by the Society. It was filed with the plaint. The Society was also relying upon perpetual sub-lease & conveyance deed dated 18th February 1994 executed by late Shri Swami Rama with the Delhi Development Authority (''DDA'') qua the suit property. This clearly contrary to the letter dated 7th October 1993 sought to be relied upon by the plaintiff society in which late Shri Swami Rama is supposed to have said that "The Society shall henceforth keep the property maintained and enjoy all ownership rights."

21. Mr. Mohit Kumar has relied upon the judgment of the Supreme Court in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, , wherein it was explained by the Supreme Court that where the plaintiff"s title is under a cloud and he does not have possession, the remedy is to file a suit for declaration, possession and injunction. Relating it to the facts of the present case, it is submitted that the Society on one hand gave up its claim of ownership on the basis of the Will. However, it was trying to revive that very plea of ownership by referring to some other document which was not produced for over four years after the filing of the Suit. It was not open to the Society at this stage to convert the suit into one for mere possession either.

22. Appearing for the Society, it is submitted by Mr. Jayant Bhushan, learned Senior advocate that by the amendment in question, the essential nature of the suit was not being changed. The cause of action paragraph of the plaint had referred to the dedication of the suit property in favour of the Society and the letter dated 7th October 1993 purportedly written by late Shri Swami Rama only substantiated the said plea. It is submitted that there is no inconsistency in the pleas sought to be introduced by way of amendment in para 3A of the plaint. Referring to para 3 of the original plaint, it is submitted that declaration of the suit property as the administrative office of the plaintiff society in the year 1989 by late Shri Swami Rama is further substantiated by the document sought to be placed on record. Relying on the judgment of the Supreme Court in Ragu Thilak D. John Vs. S. Rayappan and Others, , it is submitted that in considering an application for amendment of the plaint, a hyper technical approach ought not to be adopted. Mr. Bhushan was also critical of the Petitioner trying to delay the proceedings and not allowing the trial to progress.

23. It is settled law that the purpose and object of Order VI 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". It was explained in B.K.N. Narayana Pillai Vs. P. Pillai and Another, that "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 hypertechnical approach."

24. The Supreme Court, in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, , observed in para 63 as under (SCC @ p. 102):

Factors to be taken into consideration while dealing with applications for amendments

63. On critically analyzing 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule

17. These are only illustrative and not exhaustive.

25. Ultimately, whether allowing the amendment would be justified will depend on the facts and circumstances of a case.

26. In deciding an application under Order VI Rule 17 CPC, the trial court cannot be oblivious to the events leading to the filing of that application. In the first place, if the application for amendment is filed several years after the suit is filed and what is sought to be introduced as an amendment is a fact which predates the filing of the suit, then the burden is on the plaintiff to explain why it was is prevented from bringing those facts or documents on record earlier. This is to ensure that the application seeking amendment is bonafide and has not been filed to unnecessarily delay the proceedings.

27. In the present case, this Court finds that the learned ADJ in the impugned order failed to note that the application seeking amendment was filed only on 23rd November 2007, whereas the suit itself had been filed on 7th January 2003. In the plaint originally filed the date of dedication is not indicated in para 3 of the plaint. In fact, in para 3 it is only stated that late Shri Swami Rama duly declared the suit property as the administrative office of the plaintiff Society. It is only in the cause of action paragraph i.e. paragraph 23 of the plaint that it is pleaded that "The cause of action further arose in the year 1989 when H.H. Late Swami Rama dedicated and granted the subject property for the use and occupation of the plaintiff society." However, when this read with para 5 of the same plaint which states that "On 9-4-1996, upon establishing the entire infrastructure, hospital and medical institute, H.H. Late Swami Rama executed a registered Will by way of which he dedicated and bequeathed all the assets and properties in his name to the plaintiff-society," it is plain that the dedication spoken of in para 23 of the plaint refers to dedication by way of a Will as pleaded in para 5 of the plaint. However, the Society gave up its case on the basis of the Will before this Court in C.R.P. 403 of 2004 as recorded in this Court''s order dated 23rd August 2007.

28. This Court is, in the circumstances, unable to concur with the view taken by the learned ADJ that since the dedication pleaded was in the year 1989 itself no new fact has been introduced. The learned ADJ has also not appreciated what in fact the letter dated 7th October 1993 says. The said letter reads as under:

The Secretary,

HIHT

Jolly Grant

Dehradun

SUB: Administrative office of the Society at 704 Sarva Priya Apartments, Sarva Priya Vihar, New Delhi.

Dear blessed Narendra Mohan,

As already declared by me I have dedicated the above mentioned premises and property at 704 Sarva Priya Apartments, Sarva Priya Vihar, New Delhi to the Himalayan Institute Hospital Trust for its absolute occupation as its administrative office and for the use of Society purposes. The Society shall henceforth keep the property maintained and enjoy all ownership rights.

Please do the needful.

Yours in the service of lord

-sd-

Swami Rama

29. This Court is, for the purposes of the present petition, not deciding whether the above letter is a genuine document or not. That would be a matter for the civil court. It is proceeding on an assumption that the document is admissible only to examine its tenability. The above letter starts by saying "As already declared by me I have dedicated the above mentioned premises..." It is not clear when such dedication took place. The above letter certainly does not state that the dedication took place in 1989. The last line of the letter that the Society shall enjoy all ownership rights is inconsistent with the fact that the deed of conveyance was executed by the DDA only on 18th February 1994. Therefore, ownership rights could not have been transferred by the above document dated 7th October 1993 to the Society. Thirdly, even if the above document amounts to transfer of moveable property inter vivos, it is inadmissible in law as such document has to be compulsory registered.

30. The learned ADJ does not appear to have addressed the obvious question: Why was this letter dated 7th October 1993, which presumably was in the possession of the Society throughout, not produced earlier? Despite the several rounds of litigation in various courts, including this Court, why did the Society make no move

to amend the plaint? The basic requirement was that there had to be an explanation to this effect in the application seeking to bring the document on record. The learned ADJ, in any event, failed to appreciate that the claim of the Society to ownership of the suit property, on the basis of the letter dated 7th October 1993, is inconsistent with the case set up by the Society in the plaint.

31. In the considered view of this Court, the Society was by an application for amendment under Order VI Rule 17 CPC trying to change very character of the suit. It had effectively given up the plea for declaration as to title/ownership on the basis of the Will, which was what its suit was based on. After the submissions made in CRP No. 403 of 2004 on 23rd August 2007, the only prayer which survived was the Society''s claim for possession of the suit property. If the Society was still seeking to prove its title to the suit property, that had to be on the basis of existing pleadings and documents. It could not be achieved by introducing a new document which predates the suit and which is inconsistent with the plea in the plaint. The predicament of the Society appears to be further compounded by what has been observed by the Supreme Court in Anathula Sudhakar in para 13.2 and 13.3 which read as under:

13.2 Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

32. The amendment sought to be made to the plaint by the Society by introducing para 21A, which relates to the proceedings u/s 145 Cr. PC and the quashing of an FIR, was unnecessary. The parties have already been granted permission to summon the record of the SDM for the purpose of evidence. Consequently, the amendment sought by inserting para 3A was impermissible in law. The amendment sought by inserting para 21A was unnecessary.

33. There is no merit in the contention of the Society that the Petitioner is trying to delay the matter. The proceedings in the trial court were stayed by an order dated 2nd September 2004 passed by this Court in the revision petition filed by the Petitioner. The CRP was taken up for final hearing only three years later, a delay not attributable to the Petitioner. At the final hearing, a statement was made by the Society giving up its plea based on the Will. In the circumstances, the Petitioner

cannot be held to be responsible for the judicial delay in disposing of the revision petition and during which time the trial was stayed. This time around, it is the Society which has delayed the trial of the suit by belatedly filing an application to amend the plaint, which was untenable in law.

34. Consequently, the impugned order dated 28th November 2007 of the learned ADJ allowing the Society''s application under Order VI Rule 17 CPC cannot be sustained in law and is hereby set aside. The subsequent orders dated 3rd December 2007, 26th February 2008 and 28th February 2008 of the learned ADJ are also unsustainable in law and are also hereby set aside.

35. The suit is now restored to the stage at which it was prior to the passing of the impugned order dated 28th November 2007. The learned ADJ will proceed in the suit in accordance with law.

36. The petition is allowed with the costs of Rs. 5000/- which shall be paid by the Society to the Petitioner within four weeks. All the pending applications stand disposed of.