

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

Date of Reserve: 11th February, 2010
Date of Order: 12th March, 2010

CM(M) No. 1623/2004

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12.03.2010

Ram Kumar Gupta

... Petitioner

Through: Mr. Rakesh Makhija, Advocate &
Mr. Vishal Garg, Advocate

Versus

Begum Shahzadi & Ors.

... Respondents

Through: Mr. L.D. Adlakha, Advocate &
Ms. Ripin Adlakha, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition the petitioner has assailed an order dated 14th October, 1999 whereby an application under Order 6 Rule 17 CPC of the petitioner, who is plaintiff before the trial Court, was dismissed by the trial Court holding that the plaintiff by way of amendment wanted to incorporate totally new facts, inconsistent with the earlier pleas and in fact wanted to change the description of the suit property altogether after about 8 years of filing of the suit.

2. Plaintiff had filed a suit for permanent injunction and mandatory injunction claiming himself to be owner of property no. 2538 Tiraha Bairam Khan, Darya Ganj, Delhi. In the plaint he stated that shop no. 2538 had two doors. He alleged that the defendant, a tenant in the shop, without his permission and consent, was making alterations and additions and therefore he sought a mandatory injunction directing defendants to demolish the construction already made on the first floor and

to fill up already dug basement area in the shop. Along with plaint, plaintiff filed a site plan showing a composite shop with two doors and a wall with a door in-between connecting the two shops and described it as shop number 2538. In the WS, defendants stated that this was not one shop but these were two shops; one was having no. 2538 and other was having number as 2538A. The relationship of landlord/tenant was not denied. It was stated that out of two shops one shop no. 2538 was repossessed by the plaintiff taking advantage of the fact that defendant no.1 was a widow and there was no senior member to advice her. The plaintiff in the replication insisted that it was one shop with two doors with municipal No. 2538

3. During the trial when the defendants persisted with theory of two shops plaintiff then filed this amendment application under Order 6 Rule 17 CPC whereby he wanted to amend the plaint by saying that though the tenanted shop bore municipal number 2538 Tiraha Bairam Khan, Darya Ganj, Delhi but private numbers to the two parts of shop were given as 2538 and 2538A. Portion in the site plan shown as 'A' bore private No. 2538 and portion shown as 'B' bore private No. as 2538A. It was stated that since the premises remained the same and this objection had been taken by the defendants themselves the amendment would not prejudice the defendants. The defendants opposed the application on the ground that the plaintiff/petitioner was trying to change the suit property he did not amend the plaint despite objection taken by the defendants in the very beginning.

4. The trial Court while dealing with application referred to a Local Commissioner's report who was appointed to visit the shop and to report about the recent construction, if any, being done and to report to the court the location, possession etc. of the shop. The Local Commissioner after recording how he was prevented from inspecting the shop by the defendants (respondents herein) and how a large crowd was gathered by the respondents on the spot, how he had to take the police help to inspect the shop, reported that inside the shop building material (sand,

cement, badarpur, wooden logs) were lying on the first floor of the shop. Tools for construction were also lying and flooring material in the form of white cement and marble chips was also lying but the flooring had not yet been done. He found that though there was no basement in existence however, the construction of the wall was very recent and in order to camouflage the same, a coat of whitewash was given over the walls. He did not find a door/window or opening in-between the two shops marked as 'A' & 'B' in the site plan of the plaintiff. From this report the trial Court concluded that there were two separate shops and the contention of the plaintiff that this was one shop having two doors stood negated.

5. A perusal of report shows that trial Court ignored substantial part of the report. It ignored that the construction of wall was a recent phenomenon and the very grievance of the petitioner was that the tenant was undertaking illegal construction without his consent. The trial Court also ignored the fact that the site plan filed by the plaintiff matched at the site and two portions of the shop as shown as 'A' & 'B' existed on site and the Local Commissioner specifically stated that both portions were having same municipal number.

6. It is apparent that either the learned trial Court did not read Local Commissioner's report fully or used it selectively without applying his mind. The change being sought by the plaintiff/petitioner was not of the property but of the property number. The site plan remained the same. The property number also was same in the amended plaint as 2538 only plaintiff made it clear that private numbers had been given to the two portions of the shop as 2538 and 2538A. The trial Court also did not realize that the plaintiff had not asked for filing any new site plan showing any new premises.

7. It is settled law that an amendment to clarify or to rectify the numbers of the existing property is merely an amendment of technical nature which really does

not affect the suit premises and such an amendment does not prejudice the rights of the parties. No doubt there was delay in filing application but the amendment sought by the plaintiff was not in respect of any material aspect requiring any additional evidence. No additional facts were sought to be incorporated. No additional issues were sought to be raised and only correction of the number of the shop was sought by way of amendment. The trial Court therefore wrongly exercised his jurisdiction in rejecting the application.

8. The petition is allowed. The order dated 14th October, 1999 of the trial Court is set aside. Application of the petitioner under Order 6 Rule 17 stands allowed.

March 12, 2010
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SHIV NARAYAN DHINGRA, J.