

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 16, 2010

Date of Order: March 02, 2010

+ CM(M) 484/2008

%

Sir Sobha Singh & Sons & Ors.

Through: Ms. Alpana Poddar, Advocate

02.03.2010

...Petitioners

Versus

Bimla Devi & Ors.

Through: Mr. S.N. Varma, Advocate

...Respondents

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

1. By way of present petition, the petitioner has assailed an order dated 11th February, 2008 passed by learned trial court whereby an application under Order VI Rule 17 CPC made by the respondent herein for amendment of plaint was allowed.

2. The respondent had filed a suit for permanent injunction against the petitioner and in the suit the respondent has claimed that he was tenant of the petitioner herein and there was apprehension that he might be forcibly dispossessed. Later on, he filed the present application under Order VI Rule 17 CPC in order to add a relief of declaration that he was a tenant of the petitioner. The learned trial court observed that the amendment sought by respondent was not going to prejudice the petitioner and the inconvenience caused to the petitioner can be compensated. He, therefore, allowed the application with costs of Rs.5,000/-.

3. It is submitted by counsel for the petitioner that the amendment allowed by the trial court was without jurisdiction and the trial court ignored the judgment of Supreme Court cited by him before the trial court namely **AIR 2007 SC 806** wherein the Supreme Court held that the trial commences when the issues are settled and the case is set for recording of the evidence. He submitted that in the present case, the issues have already been settled and the evidence had commenced and the application for amendment was made subsequently.

4. A perusal of the suit filed by the plaintiff (respondent herein) would show that the plaintiff in the suit had taken the stand that he was tenant of the petitioner in respect of the suit property and the defendants stand was that he was not the tenant and was a trespasser. In order to decide the suit filed by the respondent, it was incumbent upon the court to give a verdict on the issues whether the respondent was tenant or not. The amendment sought by the plaintiff/ respondent is only to the effect that a declaration be given that he was a tenant and the trial court was bound to adjudicate this issue in any case. The trial court, therefore, was right in allowing an application regarding prayer of declaration. No other amendment as sought by the respondent/ plaintiff in the body of plaint. The amendment was sought only in the prayer.

5. I find no reason to upset the impugned order passed by the trial court since the order is just and proper. The petition is hereby dismissed. No orders as to costs.

March 02, 2010
rd

SHIV NARAYAN DHINGRA J.