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THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 533/2010 with CM 7220/2010

Date of Decision: 16.07.2012

MOHD AHMED

..... Petitioner

Through: Mr. Rakesh Mahajan, Advocate.

Versus

HARISH KUMAR AGGARWAL & ORS

..... Respondents

Through: Mr. T.K. Ganju, Sr. Adv. with
Mr. RAnvir Singh, Mr. Tishwar
Prasad and Mr. Aditya Ganju,
Advocates for R-1.
Mr. Neeraj Gupta, Adv. for R-
3(b)

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This petition under Article 227 of the Constitution of India assails order dated 10th February 2010 whereby two applications of the respondent No. 1 (plaintiff in the suit) filed under Order 6 Rule 17 CPC were disposed by the learned Additional District Judge (ADJ).

2. The respondent No. 1 herein filed a civil suit for partition, declaration and mandatory injunction against his father Sh. P.N. Aggarwal and others. In the said suit, the petitioner herein was arrayed

as defendant No. 12. Thereafter, on the deletion of some other defendants, he was renumbered as defendant No. 2. The plaintiff had prayed declaration against defendant No. 12 (re-numbered as defendant No. 2) *inter alia* seeking declaration that the agreement to sell executed by his father late Sh. P.N. Aggarwal in his favour be declared null and void and not binding upon him. The averments in this regard were contained in para 46A of the plaint.

3. During the course of arguments learned counsel appearing for defendant No. 2 (petitioner herein) submitted that no relief was claimed against this defendant, which was controverted by the plaintiff. Amongst others, the relief of declaration was sought against his father (defendant No.1) as well as other defendants that the agreements to sell executed by the former be declared null and void and not binding upon the plaintiff. Similar decree was also prayed in respect of defendant No. 2 (petitioner herein). Further, relief was also claimed seeking restraint against his father (defendant No.1) and his attorney, agents etc. from executing sale deed in furtherance of the said agreements to sell in favour of defendant Nos. 2 to 12.

4. In one of the applications filed by the plaintiff under Order 6 Rule 17 CPC, which came to be allowed vide the impugned order, the relief was sought for amendment in para 46A and the prayer clause of the plaint. The averments on which the amendments are sought are to the effect that at the time of filing of suit, the plaintiff was not aware about

the execution of sale deed in respect of the suit premises by his father to defendant No. 2. It was also averred that no consent whatsoever, was taken by his father from him prior to the execution of said agreements to sell and thus, the sale deeds executed are null and void and not binding upon the plaintiff. It was pleaded that the plaintiff had come to know about the execution of the sale deed dated 08.05.1991 during the pendency of the suit and about which he was not aware at the time of filing of the suit. The amendments sought are stated to be necessary for the determination of real question in controversy between the parties.

5. The application was opposed by the petitioner herein (the defendant No. 2 in the said suit). The pleas which were taken in opposing the application were that the plaintiff was well aware about the execution and registration of the sale deed dated 08.05.1991 at the time of filing of the suit, but intentionally avoided to challenge the same and now he cannot challenge the same, since a legal right has accrued in his favour (the petitioner). It was also submitted that the amendments could not be allowed being barred by limitation and also not being relevant and necessary. Vide the impugned order, the learned ADJ allowed the amendments subject to certain costs. It is this order of the learned ADJ which has been assailed in the instant petition.

6. The main contentions of the learned counsel for the petitioner herein (defendant No. 2 in the suit) are that the amendment sought is highly belated. In fact, in the WS filed by this petitioner on 07.12.1993,

it was mentioned that a sale deed had been executed in his favour and despite that the plaintiff did not choose to seek amendment for such a long time. It is submitted that the period of limitation has expired and at this stage the petitioner has acquired a valuable right, which cannot be taken away by time barred amendments.

7. The learned counsel for the petitioner relied upon **AIR 1997 Supreme Court 772**, T.L. Muddukrishana and another vs. Smt. Lalitha Ramchandra Rao. The reliance on this judgment is misplaced inasmuch as in that case the appellant had filed a suit for mandatory injunction asking the respondent to comply with the requirements as mentioned in the agreement between them. After filing of the suit, he sought amendments in the plaint to seek relief of specific performance of the contract. Since the time had been fixed for performance of the contract between the parties, the limitation had begun to run from the date the parties had stipulated for performance of the contract. The suit was required to be filed within three years from the date fixed by the parties under the contract. Since the application for amendment of the plaint came to be filed after the expiry of three years, it certainly changed the cause of action as required to be specified in the plaint. It was under these circumstances that the application seeking amendment was held to be barred by limitation.

8. The facts of another case, relied upon by the petitioner, titled as **Mrs. Janet Anne Woolqar Jamesa & Ors. V Jaypee Hotel Ltd**,

83(2000) DLT 277 (DB) are also not applicable to the present case. In that case the suit was filed in the year 1989 for the recovery of about Rs.70.00 lakh. The amendment was sought to claim double the amount. It was held that “quantity” of the relief does not remain the same and amendment would amount to permitting the setting up a fresh claim in respect of a cause of action which had become barred by limitation on the date when the amendment was sought. Such amendment, if allowed, was held to cause injustice to the defendants for which they could not be compensated.

9. There is no dispute that the suit was filed in the year 1992 and the instant application seeking amendment was filed by the plaintiff in the year 2002. The explanation given by the plaintiff in filing the application for amendment at this stage was that he was unaware of the execution of the sale deed by his father. It was his submission that immediately on coming to know of this fact he had sought amendment in his plaint. This explanation was rightly found by learned ADJ to be vague and unbelievable. It is a matter of record that the plea regarding execution of sale deed was taken by the petitioner in his WS filed on 07.12.1993. Apparently, the application filed in the year 2002 i.e. after a lapse of about 8 years, was hit by limitation. However, that cannot be the end of the matter.

10. Going back to the averments in the original plaint, as briefly noted above, it is seen that the plaintiff had sought declaration in respect

of agreements to sell as executed by his father and the defendants and had also sought restraint order against his father and his nominees etc. from executing sale deeds in furtherance of agreements to sell in favour of the defendants or their nominees. By way of the amendments, the changes are made from agreements to sell to the Sale Deed. Para 46A of the original plaint also contained averments regarding sale agreement entered into with defendant No. 12 (re-numbered as defendant no. 2) for which sale consideration of Rs.60,000/- was entered into. There was also an averment that said agreement was entered into without any legal necessity and the transaction was not beneficial to the estate of Hindu Undivided Family. The present amendment seeks to amend this para 46A on the premise that the said agreement to sell has matured into sale deed in favour of defendant No. 2. The sale consideration as well as the grounds of challenge to the agreement to sell are the same as are for the challenge to the sale deed. This would show that the controversy was well within the knowledge of defendant No. 2 (petitioner herein) and that no new case was being set up by the plaintiff. In fact, the facts constituting the cause of action already existed on the record. The case which was sought to be set up by way of amendment was not altered substantially to cause any prejudice to the petitioner (defendant No. 2).

11. No doubt, there has been considerable delay in filing the application of seeking amendments, but, the amendments sought seem to be relevant and necessary for the real controversy between the parties. Seeking of declaration of agreement to sell and restraint to execute the

sale deeds no longer survived in view of the agreements to sell having matured into sale deeds.

12. The Supreme Court in **Vineet Kumar Vs. Mangal Sain Wadhera, (1984) 3 SCC 352** held thus:

“16. Normally amendment is not allowed if it changes the cause of action. But it is well recognized 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.”

13. The Supreme Court in **B.K. Narayana Pillai v. Parameswaran Pillai 2000 1 SCC 712**, after referring to various judgments held thus:

“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 hyper technical 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.”

14. In another case titled as **Sampath Kumar v. Ayyakannu (2002) 7 SCC 339** the Supreme Court held as under:

“9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by

reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment."

15. In the aforesaid case of **Sampath Kumar** the amendment was sought after almost 11 years of institution of the suit. It was held that the plaintiff was not barred from instituting any suit seeking relief of declaration on the same basic facts as are pleaded in the plaint seeking relief of injunction and which is pending. It was further held that in order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit.

16. It is well settled by catena of decisions that in the relief of injunction an application for amendment of plaint is really the discretion of the Court. An amendment of plaint should not be refused on technical grounds. In its discretion, the Court can allow an application for amendment of plaint even where relief sought by amendment is barred by limitation. Exercise of discretion of the Court in allowing or rejecting an amendment would depend upon the facts and circumstances of the case and such discretion has to be exercised on judicial evaluation. It is also trite that an amendment, which specially serves to

the cause of justice and avoidance of multiplicity of litigation, should be allowed.

17. Having seen the averments in the original plaint and the amendments sought, it would be seen that the basic structure of the suit is not altered by the proposed amendments. What is sought to be changed is the nature of relief sought for by the plaintiff. There cannot be any denial that the plaintiff would be entitled to file independent suit in respect of the sale deeds. If it was so, then why the same relief could be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing amendment would certainly curtail the multiplicity of the legal proceedings. Since the petitioner knew that the plaintiff was objecting to the execution of agreement to sell by his father with him and was also seeking restraint of the sale deed in his favour, the proposed amendment was, in any way, not going to prejudice or surprise him, in any manner.

17. In view of my above discussion, I could not see any infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

JULY 16 , 2012

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