

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

+ CM(M) 222/2011 & CM 4092/2011

% Decided on: 8th April, 2015

JAGBIR SINGH & ANR. Petitioner
Through: Mr. Sunil Chauhan, Adv.

versus

DHARAMVIR & ORS. Respondents
Through: Mr. Akhilesh Sharma, Adv. for R-2.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 2nd November, 2010 whereby the application of respondents/legal heirs of plaintiff Bhagwati Devi seeking amendment of the plaint was allowed, the petitioners/defendants in Suit No.1041/2002 prefer the present petition.

2. By way of application under Order 6 Rule 17 read with Section 151 CPC the legal heirs of Bhagwati Devi had sought the following amendments and prayer clause:-

“Even otherwise the sale deed 30.08.1996 is illegal and void ab-initio as the defendant no.1 had ‘no valid authority’ to present the document for registration. Provision of section 32 Registration Act are imperative and unless a document presented for registration is presented by one of the persons described in the section, the registration is invalid. The same is hit by section 32 r/w section 33 (1) (a), because defendant no.1 by no stretch of imagination can be

taken to be 'duly authorised' by a power of attorney executed before an authenticated by the registrar or sub-registrar as required by section 33(1)(a) of the Registration Act 1908. And consequently the sale deed dated 30.08.1996 is invalid and of no legal consequence.

Prayer Clause: *At the end clause (ii) of the prayer clause the following words may be added:- "And by necessary implication any or all documents subsequently executed by defendant no.3 in favour of any other persons would be null added void any of no consequences."*

3. The objection of the petitioners herein to the impugned order is that since trial has started, no amendment could have been allowed and the purpose of amendment was only to drag the litigation. It could not be said that despite due diligence these facts were not in the knowledge of L.Rs. of Bhagwati Devi.

4. The plea taken by L.Rs. of Bhagwati Devi in the application under Order 6 Rule 17 CPC is that due to inadvertence on the part of previous counsel, the said important legal plea regarding the validity of the sale deed could not be taken in the plaint. By way of amendment, no new fact had been introduced and since the said plea is both based on fact and law, the amendment in the plaint was necessary.

5. The application under Order 6 Rule 17 CPC was filed by L.Rs. of Bhagwati Devi, the respondents herein on 10th August, 2009 when only the evidence by way of affidavit of Udai Singh had been filed. No cross-examination has been conducted. Order VI Rule 17 CPC does not prohibit amendment even when trial has commenced. It only requires the party to show that despite due diligence it could not have raised the matter before commencement of trial.

6. A party can neither go over and above legal advice nor would know in respect of legal issues and is thus dependent on the counsels. It is stated that the plea has been left out due to inadvertence by the earlier counsel. A party to a litigation should not be penalized for the fault of the counsel. The amendment does not introduce any new fact nor changes the fundamental nature of the suit nor withdraws an admission. Only a legal plea based on facts is sought to be added. Hence no illegality can be attributed to the impugned order in permitting the amendment as sought.

7. The petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 08, 2015
‘v mittal’