

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

+ CM(M) 1054/2014 & CM 19568/2014

% Reserved on: 15th May, 2015
Decided on: 29th May, 2015

SMT.MADHU Petitioner
Through Mr. Anand Yadav with Ms. Anita
Tomar, Advs.
versus

RANBIR SINGH DABAS & ANR Respondents
Through Mr. Sanjay Sehgal, Adv. for R-1
Mr. Jayandra, Adv. for DDA.

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

1. Aggrieved by the order dated 2nd September, 2014 whereby the application of the respondent No.1 under Order 6 Rule 17 CPC was allowed the petitioner prefers the present petition.
2. A suit was filed by respondent No.1 Ranbir Singh Dabas against the petitioner Smt. Madhu and Vice Chairman, DDA seeking specific performance of the agreement and permanent injunction against Smt. Madhu. It was stated that in the year 1985 Land and Building Department acquired the land of Shri Vijay Singh admeasuring 24 bighas situated at Rithala, Delhi vide award dated 10th September, 1985 and also recommended for allotment of an alternative plot. Vijay Singh, husband of Smt. Madhu passed away on 19th July, 2007. During his life time Vijay Singh

represented to Ranbir Singh to be the prospective owner of the plot admeasuring 332.5 sq.mtr. allotted to him by virtue of a recommendation letter and that he was interested to sell the said plot. Ranbir Singh agreed to purchase the said plot on a premium of ₹3,58,000/- and paid the said premium to late Vijay Singh in cash. An agreement to sell/Bayana receipt was executed between Ranbir Singh and Vijay Singh on 31st March, 2001. At that time Smt. Madhu also executed a separate receipt acknowledging receipt of ₹3,58,000/- as sale consideration for the plot. General power of attorney and special power of attorney were executed in the name of Ranbir Singh and all original documents were delivered to him. It was also assured by Vijay Singh and Madhu that they would cooperate with Ranbir Singh in future and hand-over all the documents of DDA from time to time. On the allotment of plot vide letter dated 24th March, 2008 Ranbir Singh approached Smt. Madhu as Vijay Singh had expired by that time and asked her to complete the formalities. Though Smt. Madhu performed some formalities like execution of the relinquishment deed, depositing the same in DDA etc., however thereafter she refused to perform the subsequent formalities. Ranbir Singh also deposited a sum of ₹ 2,50,000/- and ₹11 lakhs with DDA through demand draft.

3. Vide the amendment application Ranbir Singh stated that while going through the original file it was revealed that after allotment of the plot Madhu had acknowledged the execution of the earlier agreement and also undertook to complete the necessary formalities. Since this fact was not brought to the notice of the counsel by Ranbir Singh and has now come to the knowledge of counsel, thus an amendment was sought in Paras 10 & 24 of the plaint.

4. The petitioner/defendant Madhu objected to the said proposed amendment and filed a reply that by the proposed amendment a new cause of action is sought to be introduced by relying upon an alleged agreement dated 4th April, 2004. The amendment sought is barred by limitation. By way of the amendment the suit would be beyond the pecuniary jurisdiction of the Trial Court. Since the issues have been settled and trial has commenced the requirement under Order VI Rule 17 CPC that the facts were not in the knowledge of plaintiff despite due diligence has not been shown.

5. Learned Trial Court vide the impugned order held that the documents dated 4th April, 2008 was a continuation of the earlier agreement and Ranbir Singh did not set up an entirely new case or a new cause of action by the proposed amendment. The plaintiff has stated that this fact was not brought to the knowledge of his counsel at the time of filing of the suit until recently when this application was filed and considering the nature of the document the amendment was allowed.

6. Learned counsel for the petitioner/defendant Madhu reiterates his contention that a new cause of action has been permitted to be added. By the new cause of action the suit is barred by law of limitation and any amendment which is beyond the period of limitation cannot be permitted to be added. Further Ranbir Singh has not shown any due diligence. The document was always in his possession and he failed to bring the same to the notice of the counsel. Reliance is placed on Sonali Gulati Vs. State & Anr. 94 (2001) DLT 499; T.L. Muddukrishana & Anr. Vs. Lalitha Ramchandra Rao AIR 1997 SC 272; Smt. Rahimunnisa Begum & Ors. Vs. Mohd. Mohammadulla Khan Durrani (Died) & Ors. 2004 AIHC 2242; Govindasamy Vs. Velchami & Ors. 2004 AIHC 2009; Jeet Ram Kishore &

Ors. Vs. Sunder Singh AIR 2005 H.P. 21 and Vijay Kumar Dabas Vs. Chahat Ram & Anr. CS(OS) No. 506/2010 decided on 30th August, 2012.

7. Learned counsel for the respondent on the other hand contends that cause of action arose in 2008 when the suit was filed. There is no new cause of action by the amendment nor is the same barred by limitation. The initial payments were made by Ranbir Singh to DDA. The objections of the suit being barred by limitation and others were already taken in the application under Order 7 Rule 11 CPC which has been dismissed which order has attained finality and thus the same cannot be re-agitated in the present petition. The final cause of action arose in favour of Ranbir Singh when the allotment letter was issued. The receipts do not affect the period of limitation. The receipts rather only acknowledge the earlier agreement. So no new case is made out by the amendment. Reliance is placed on Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & Ors. AIR 1957 SC 363; Lakshmi Raman Malu Vs. Smt. Venkatamma & Anr. 2001(3) Civil Court Cases 167 (KAR); T.P. Palaniswami & Anr. Vs. Deivanaimmal & Ors. AIR 1984 MADRAS 19; Mangal Dass Sant Ram Gauba Vs. Union of India & Ors. AIR 1973 Delhi 96 (V. 60); Kanaiyalal Chandulal Ganeshwala Vs. Zubedabibi AIR 2009 Gujarat 87 and Manu Maharani Hotels Ltd. Vs. Thakur Dan Singh Bist Trust & Anr. AIR 2010 Uttarakhand 49.

8. Heard learned counsel for the parties.

9. In Revajeetu Builders & Developers Vs. Narayanaswamy & Sons (2009) 10 SCC 84 Supreme Court laid down the factors to be taken into consideration while dealing with applications for amendment as under:

“(i) whether the amendment sought is imperative for proper and effective adjudication of the case;

- (ii) whether the application for amendment is bonafide or malafide;
- (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (vi) 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.”

10. In the application under Order VI Rule 17 CPC which was filed by Rajbir Singh after the issues were settled, it is stated that when the counsel called the plaintiff with all the documents while going through the file of the plaintiff, these documents were revealed which were after the allotment of the plot acknowledging the execution of the earlier agreement entered into between the parties. Thus, amendment to Para 10 was sought to include that defendant No.1/petitioner herein had executed an acknowledgement/agreement dated 4th April, 2008 thereby acknowledging the sale of the plot bearing No. 149 in favour of Ranbir Singh and further to get the necessary relinquishment deed executed in his favour from all the legal heirs of late Vijay Singh including his mother for mutation and to complete the formalities with DDA. Simultaneous amendment was sought in the paragraph relating to cause of action. In the plaint as originally filed in Para 24 Ranbir Singh stated that the cause of action arose on 31st March, 2001 when the agreement to sell/ Bayana receipt was executed. Further on 19th March, 2008 when DDA allotted the plot to Vijay Singh in terms of the

recommendation and when the plaintiff called upon defendant No.1 by way of legal notice dated 4th March, 2010. Thus, in the plaint, Ranbir Singh has pleaded cause of action and the amendment sought to be introduced was part of the same. The final cause of action arose to the petitioner after the allotment letter was given by DDA in favour of Vijay Singh late husband of Madhu and when Smt. Madhu failed to execute the necessary documents despite legal notice. By introducing the proposed amendments, no new claim which is time barred has been added. The amendment only introduces facts which would further prove the case of Ranbir Singh, however do not change the fundamental nature of suit. In case the amendment is refused the same would cause injustice to Rajbir Singh.

11. From the facts as noted above it is clear that neither any admission has been withdrawn by Ranbir Singh by the proposed amendment nor has it altered or changed the fundamental character of the suit. Thus, I find no infirmity in the impugned order. The petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015
‘ga’