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

+ **CM(M) 361/2015**

% **Decided on: 27th April, 2015**

SUNHARI SINGH & ANR

Through

versus

JAGDISH

Through

..... Petitioner

Mr. Manish Vashisht, Mr. Sameer,
Mr. Amit Kr. Thakur, Advs.

..... Respondent

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 7605/2015

Exemption allowed subject to just exceptions.

CM(M) 361/2015 & CM 7606/2015 (stay)

1. Aggrieved by the order dated 15th January, 2015 whereby an application filed by Jagdish respondent/plaintiff under Order 6 Rule 17 CPC was allowed, the petitioners who are the defendants in CS No.148/13 file the present petition.

2. In the plaint Jagdish stated that he was allotted plot Nos. 85 & 114 Masoodpur, New Delhi (in short the suit plots) from DDA. He permitted his brothers Sunhari Singh and Daya Ram to use the said plots for running their dairy business, however subsequently Jagdish noticed construction made over part of the plots. Thus, he filed the suit seeking possession of the suit plots from the defendants and permanent injunction restraining the

defendants from creating third party interest or carrying out construction over the suit property.

3. In the written statement filed it was, inter alia, pleaded that in 1965 the plaintiff and defendants with their father had migrated from District Alwar, Rajasthan and started residing in Delhi. They were doing dairy farming and the owner of the plot expressed the desire to sell the same. Thus father of the plaintiff and defendants started paying him money from the joint family funds. In 1976 DDA announced a scheme for allotment of dairy plots in Delhi in order to shift the dairies from the residential area and thus plot No. 85 was allotted by DDA in the name of Jagdish, however the license fee was deposited from the joint family funds. With the passage of time further construction up to three stories was made out of the joint family funds. In 1983 DDA further announced the allotment of additional plots when plot No. 114 was allotted. As per the oral family settlement the father of the parties decided that Jagdish will possess the Garhi plot which is three storied building, Sunhari Singh and Daya Ram were given exclusive possession of plot Nos. 85 and 114 at Masoodpur Village, New Delhi. It was thus pleaded that the defendants were absolute owner of the properties and defendant No.2 had already built 5 shops and out of the same two shops were in possession of defendant No.2 and three had been rented out. Further defendants constructed 6 rooms on the back side which were on rent besides four rooms with bathroom, kitchen, toilet and one servant quarter which were being used by the defendant No.2 for his residence.

4. In the light of these averments about the shops having been let out on rent, Jagdish the plaintiff filed an application under Order 6 Rule 17 CPC on 19th December, 2013 seeking amendment of the plaint after issues were

settled on 2nd February, 2013 and he had filed his evidence by way of affidavit on 17th December, 2013.

5. The grievance of the petitioner to the impugned order is that the issues having been settled, no amendment of the pleadings was permissible. The only ground taken for amendment was to avoid multiplicity of litigation. The amendment sought by the plaintiff was for seeking the additional prayer of mandatory injunction and recovery of rent/damages, use and occupation charges. Further the following new paragraphs were sought to be added i.e. from 20(a) to 20(e) and the consequential amendment in the cause of action paragraph. Para 20(a) to 20(e) reads as under:

“20(a) That the defendants had started/raised unauthorized construction in the property in question and the plaintiff had served the representation to the Delhi Urban Shelter Improvement Board, New Delhi on dated 20.12.2012 and 29.5.2013, to stop the unauthorized construction carrying out by the defendants and removal of the same.”

20(b) That the area of the plots/shed No.85 and 114 are 355.19 sq.mts and the defendants somehow succeed to raised a construction over there and had constructed 5 shops with kota stone and Garder and 10 rooms at ground floor with cemented sheets and one room at first floor with garder/kota stone of shed No. 85 and in shed No. 114 the defendants have constructed 3 shops and 2 godown at ground floor and on the back of ground floor there are 4 rooms and 12 rooms at first floor with pucca construction by putting a concrete lanter. The copy of the site plan is attached herewith.”

20(c) “That in spite of the restraining order the defendants have let out the portion of 85 i.e. 5 shops @ ₹ 10,000/- p.m. each and 7 rooms on the ground floor and 1 room at first floor @ ₹2000/- p.m., each and rest of the rooms of ground are with defendants and in the portion of 114, the defendants have let out 3 shops @ ₹20,000/- p.m. each and 2 godown @ ₹20,000/- p.m. each, and the back portion of the ground floor are in self occupation of the

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defendants and 12 rooms at first floor has been let out @ ₹4000/- p.m. each, thus the defendants have been raising a total rent @ ₹2,14,000/- p.m. from the property in question which belong to the plaintiff."

20(d) "The defendant have firstly unauthorized construct the both portion and thereafter had let out unauthorized and recovering the rent but have not render any account or made any payment of the same, however the plaintiff is entitled to recover the same not only this the defendant have also been using the rest of the portion which is under their occupation and as such defendants are liable to pay and render the rent which they have been recovering and also damages of the unauthorized use and occupation charges of rest of the premises in question @ ₹15,000/- p.m. as well as the rent which they have been raising from the tenants i.e. 2,14,000/- p.m. and also @ ₹15,000/- p.m. total ₹ 2,29,000/- pm to the plaintiff and the plaintiff is entitled for the same."

20(e) "That since the defendants somehow succeed to raise unauthorized construction in the property in question which is illegal and unauthorized. The defendants have no right to change the nature of the suit property in any manner as the property in question is allotted only for the purpose of shed for keeping buffaloes only and not for residence and shops. The constructions which the defendants have raised unauthorizedly are liable to be removed/ demolished and the defendants are liable to bring the suit property in the original condition/ in the shape of sheds."

6. A perusal of the application would reveal that these were events which came to the knowledge of Jagdish after the written statement was filed. The amendments do not change the nature of the suit or its fundamental character. Issues had been settled and evidence by way of affidavit of Jagdish was filed on 17th December, 2013 and immediately thereafter on 19th December, 2013 the present application was filed. In Revajeetu Builders & Developers Vs. Narayanaswamy & Sons (2009) 10 SCC 84 Supreme Court

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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.”

7. It is trite law that an application for amendment should be allowed liberally if the same is not malafide, if it does not change the fundamental character of the pleadings and does not non-suit the other side. 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. (See B.K.N. Pillai Vs. P. Pillai & Anr. AIR 2000 SC 614)

8. The amendments sought by Jagdish in the application under Order VI Rule 17 CPC satisfy the yardsticks laid down by the Supreme Court, as neither the amendments are mala-fide, nor change the fundamental character of the suit, nor withdraws an admission. Jagdish filed the application immediately after issues had been settled but the trial had just commenced. Further the ground taken in the application that the amendment sought to

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avoid multiplicity of litigation cannot be said to be a flimsy or non-est ground. Consequently, I find no error in the impugned order. Petition and application are dismissed.


(MUKTA GUPTA)
JUDGE

APRIL 27, 2015
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