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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 32/2016 & C.M. No.6972/2016 (for stay)

HANS RAJ

..... Petitioner

Through: Mr. S.K. Bhalla, Advocate.

versus

RAVINDER KUMAR

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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24.08.2016

1. By the present petition, the petitioner seeks to impugn the order dated 4.1.2016 by virtue of which the application of the petitioner/plaintiff for amendment of the plaint under Order VI Rule 17 CPC was dismissed.

2. The petitioner/plaintiff filed a suit for permanent injunction against the respondent, his son, seeking a decree of permanent injunction to restrain the respondent from trespassing into and interfering, in any manner, and dispossessing the petitioner from the suit property bearing Plot No.10, Laxmi Garden, New Delhi. It was the contention of the petitioner that he is the owner of the said property and that the respondent with *mala fide* and illegal intention is trying to grab the entire business and immovable property of the petitioner.

3. The respondent/defendant filed his written statement where he has stated that he is the owner of the suit property and that he is in possession of the suit property.

4. The petitioner has filed the present application under Order VI Rule 17 CPC stating that on account of the stand taken by the respondent in his written statement and also on account of his recent conduct of preventing the petitioner from entering into the suit property since the date of inspection carried out of the suit property by the local commissioner on 3.1.2012, the amendments are necessary. The amendments seek to add the following :

“(i) *As the defendant claims to be in exclusive possession, his licence to remain in use and occupation of the property stands revoked;*

(ii) *That on 3.1.2012, the respondent in collusion with his associates Dashrath and Shankar managed to occupy the suit plot and manipulated the documents of creation of tenancy in favour of the abovementioned persons and hence, the petitioner is entitled to recovery of mesne profits; and*

(iii) *a decree of mandatory injunction is sought against the respondent.”*

5. By the impugned order, the trial court dismissed the application holding that as per the plaint, the petitioner had throughout contended that he was in possession of the suit property and now he seeks a mandatory injunction against the respondent to recover the possession of the suit property. Hence, it was concluded that the

amendment seeks to change the nature of the suit. The trial court also noted that the stand of the respondent throughout had been that he was in possession of the property. However, the order also notes that it was the stand of the petitioner that he was in possession till the time of filing of the suit but later on he was not allowed by the respondent to enter into the suit property and this contention *prima facie* appears to be false for obvious reasons.

6. The learned counsel for the petitioner has relied upon the judgments of this court in the case of *Mangal Dass Sant Ram Gauba vs. Union of India*; AIR 1973 Delhi 96 and *Peepee Publisher & Distriutors (P) Ltd. vs. Dr. Neena Khanna & Anr.*; 2009 (110) DRJ 489 to contend that while dealing with an application under Order VI Rule 17 CPC, the court does not have to go into the truth or falsity or maintainability of the amendment sought to be introduced by way of amendment. He submits that the trial court has wrongly disallowed the application on the ground that the submission of the petitioner is incorrect. He also submits that the nature of the suit is not changed by the said amendment.

7. The matter was passed over at 1:15 p.m. as the respondent, who is present in person, mentioned that his counsel had gone to district court and is on his way. Now when the matter is being taken up, the counsel has still not appeared.

8. In any case, in my opinion, a perusal of the impugned order and the proposed amendment shows that the trial court has wrongly rejected the application of the petitioner qua amendment of the plaint

on the conclusion that the contention being raised by the petitioner is *prima facie* false and the amendment changes the nature of the suit.

9. The sequence of events which is being narrated by the petitioner is that at the time of filing of the suit, he was in possession. He is the owner of the property. After filing of the suit, the respondent has debarred the petitioner from entering into the suit property. Hence the stand now is to seek a direction for mandatory injunction directing the respondent to vacate the suit property. The petitioner still claims to be the owner. Hence, the proposed amendments cannot be said to change the nature of the suit. The suit is premised on the basis that the petitioner is the owner of the property and hence, the respondent be restrained from dispossessing the petitioner. During the pendency of the suit, it is contended that the respondent had dispossessed the petitioner and hence the proposed amendments are sought to be introduced based on subsequent developments after filing of the suit which are in consonance with the stand of the petitioner that he is the owner of the suit property. The relief sought in the original plaint and the proposed plaint flow from the alleged title of the petitioner.

10. The learned counsel for the petitioner is correct that while adjudicating the amendment application, the court is not to go into the truth or falsity of the contention which is sought to be raised. The judgments of this court passed in *Mangal Dass (supra)* and *Peepee Publisher (supra)* state the same proposition.

11. The impugned order wrongly disallowed the amendment application. Accordingly, the impugned order is set aside. The application of the petitioner for amendment of the plaint is allowed. Petition stands disposed off.

JAYANT NATH, J.

AUGUST 24, 2016
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