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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 126/2015 & C.M. No.2608/2015

SUSHMA PANGASA

..... Petitioner

Through Mr. Sachin Aggarwal, Adv.

versus

ARUN PANGASA & ORS

..... Respondents

Through Mr. Gurmit Singh Hans and Ms. Aarti Manchanda, Advs for R-1 & R-2.
Mr. Rishi Manchanda, Adv. for R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **29.03.2016**

The petitioner is aggrieved by the order dated 02.12.2014 wherein in the pending suit (suit for declaration and possession), the plea of amendment sought to be set up by the plaintiff by virtue of his application under Order 6 Rule 17 of the CPC had been dismissed.

Record shows that the present suit is a suit for declaration, possession, permanent injunction and damages. The memo of parties is relevant. Plaintiff is the estranged wife of defendant No. 1 (Arun Pangasa). Varun Pangasa is the son of the parties. Defendant No. 3 Meena Khurana is the subsequent purchaser of the suit property. The initial suit as filed by the plaintiff had sought a prayer which was to the effect that the sale deed purported to have been executed by defendants No. 1 & 2 in favour of Meena Khurana be declared null and void. The prayer clause does not mention the date of the sale deed

but this Court has been informed that the date of the so called sale deed is 30.05.2007. A further declaration had also been sought by the plaintiff that she is the owner of the suit property; damages had also been claimed from defendants No. 1 & 2.

The suit was filed in the year 2008. Written statement was also admittedly filed by the contesting defendants in the year 2008. Learned counsel for respondent No. 1 & 2 states that along with the written statement, they had pleaded their defence which was largely to the effect that the agreement to sell dated 21.03.2001 executed by the plaintiff in favour of her mother (Sheela Anand) and the subsequent agreement to sell dated 10.07.2006 executed by Sheela Anand in favour of defendant No. 2 (maternal grandson) had been filed and thus the plaintiff in the year 2008 was admittedly aware of these documents.

The plaintiff had filed the application under Order 6 Rule 17 of the CPC on 19.04.2014. The prayer made in this application was to the effect that the agreement to sell allegedly executed by the plaintiff in favour of her mother dated 21.03.2001 and the subsequent agreement to sell dated 10.07.2006 executed by her mother (Sheela Anand) in favour of her maternal grandson (defendant No. 2) be declared null and void.

The Trial Court had returned a correct finding. It had noted that while allowing/disallowing the amendment, the Court must consider whether the plea which is sought to be set in the amendment would be barred by time or not. It has been admitted before this Court that the aforementioned two documents which are sought to be

incorporated by way of this amendment were admittedly in the knowledge of the plaintiff in the year 2008 when they had been filed by defendants No. 1 & 2 along with their written statement. Present application having been filed in 2014 at the stage of the evidence of the plaintiff and in fact when PW-1 already stood cross-examined was definitely belated.

The impugned order thus declining the amendment suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 29, 2016

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