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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 152/2015 & C.M. No.3378/2015
SUNIL KUMAR GOVIL

..... Petitioner

Through Mr. Ankit Jain, Adv.

versus

MAHENDER KUMAR GARG & ORS

..... Respondents

Through Dr. Anurag Kumar Aggarwal and Mr.
Umesh Mishra, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **04.03.2016**

The petitioner is aggrieved by the impugned order dated 21.01.2015 vide which his application seeking an amendment of the plaint under Order 6 Rule 17 of the CPC had been dismissed and rightly so.

Record shows that the present suit is a suit for declaration and cancellation of certain documents i.e. agreement to sell, power of attorney, receipts, Will etc dated 06.12.2005 purported to have been executed by the plaintiff in favour of defendant No. 3. Written statement was filed. Issues were framed. Evidence was in progress. It was at this stage that the application seeking amendment of the plaint had been filed. The amendment sought for in the plaint was that the earlier Will dated 06.12.2005 stood revoked by the subsequent Will dated 21.10.2013 which the plaintiff has now executed in favour of his wife. Submission is that this fact which is a new fact which has

now come into being during the pendency of the suit could not have been incorporated in the original suit which had been filed in the year 2009; the incorporation of this amendment which is only to the effect that the earlier Will dated 06.12.2005 now stands revoked by the subsequent Will dated 21.10.2013 will not be prejudicial to the interest of the defendant and to avoid multiplicity of litigation, it would be necessary to incorporate this amendment and the impugned order disallowing this amendment has committed a folly. To support this submission, learned counsel for the petitioner has placed reliance upon 213 (2014) DLT 381 (DB) Sumitra Prashar and Anr. Vs. Raj Rani & Anr. as also 202 (2013) DLT 777 Sunshine India Pvt. Ltd. Vs. Bhai Manjit Singh (HUF) & Others.

Needless to state that this argument has been refuted.

This Court is of the view that the impugned order suffers from no infirmity. The law on amendment is clear. It is contained under Order 6 Rule 17 of the CPC. One of the facets which has to be considered by the Court while allowing or disallowing an amendment is that the nature of the suit proceedings should not change; it should not amount to derail the proceedings which are already pending before the Court.

Record shows that the present suit is a suit for cancellation of the aforementioned documents; submission of the learned counsel for the petitioner is that these documents pursuant to which possession of the immovable property had been handed over to the defendant be declared null and void. Contention being that these documents were never executed voluntarily. Written statement was filed. The only

contesting defendant was defendant No. 3. His submission was that the suit is false and malafide; defendant No. 3 is the sole and absolute owner of the suit property; he has possessory rights and he is now in possession of the suit property since 06.12.2005.

By incorporating the amendment as is now sought for by the plaintiff, his contention that the earlier Will dated 06.12.2005 purported to have been executed by the plaintiff in favour of defendant No. 3 has now been revoked by the subsequent Will dated 21.10.2013 (executed in favour of his wife), in view of this Court would change the nature of the suit. Plaintiff is now trying to set up altogether a new case which appears to be based on a fresh cause of action which is not the purport of an amendment. The law on amendment has been dealt with by the Trial Court and this Court need not delve into this. This Court only reiterates that if the nature of the suit appears to change and the amendment will derail the proceedings, the amendment may not be allowed. This had weighed in the mind of the Trial Court while disallowing the amendment.

In this background, the impugned order suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 04, 2016

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