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

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Date of decision: 22.09.2016

+ CM(M) 553/2016 & CM No.20960/2016

PARAMJEET SINGH & ANR Petitioners
Through Mr.B.L.Chawla, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through Mr.Sanjeev Rajpal, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition, the petitioners seek to impugn the order dated 18.04.2016 by which an application of the petitioners under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.
2. The plaintiffs/petitioners have in 1994 filed a suit for permanent injunction against respondents DDA, MCD and others. It is stated in the plaint that the suit relates to the land and building situated in Village Basai Darapur, New Delhi and forms part of a larger area of land where number of dwelling house and other structures are in existence. The land was said to be under the control and management of the Railway authorities. It is stated that the suit land was allotted to the plaintiffs/petitioners and others who are in actual physical use, occupation and possession. The petitioners/plaintiffs claim to have constructed a factory shed on the suit land and the

plaintiffs/petitioners alongwith their father are carrying on their business in the suit land under the name and style of M/s H.B.Shiv Foundary.

3. Subsequently, in 1982 the suit land was transferred to Delhi Development Authority (*in short 'DDA'*) but it is stated that the plaintiffs/petitioners continued to remain in possession of the suit land for more than a period of 18 years. It is further stated that a number of officials and employees of MCD have demolished a part of the factory shed of the plaintiffs/petitioners. It is contended that defendant has no locus standi or any right to intervene and interfere in the lawful possession of the plaintiffs/petitioners without due process of law. Hence, the suit is filed claiming permanent injunction against defendants to restrain them from dispossessing the plaintiffs/petitioners and also from demolishing the factory shed and structures exists thereon.

4. It may be noted that though in the original plaint there were five defendants including defendant No.2 MCD, it appears that the said defendants have been deleted in 2004. Presently, only DDA/respondent is party to the plaint.

5. The evidence of the parties has been completed. The matter is now fixed for final argument. At this stage, the petitioners have filed the present application under Order 6 Rule 17 CPC where now it is proposed to amend paras of the plaint to add the contention that the petitioners are legally entitled to remain in possession and in case the land in question is required for development activities of the respondent, then the petitioners are entitled to an alternative site for rehabilitation of the petitioners as per the policy of the Government and Scheme and Guidelines issued by the DDA from time to time. Hence, the prayer clause was also sought to be amended and the

petitioner now seeks a decree for declaration against the respondent declaring that the petitioners are entitled to allotment of alternative site for their rehabilitation before being dispossessed from the suit property.

6. The trial court by the impugned order dismissed the application stating that the facts which are proposed to be brought on record were in the knowledge of the petitioners when the suit was filed. The amendment is sought at the end of the trial when in fact, defence evidence has already been closed and the matter is pending for final argument. Earlier also it was noted that the petitioners have filed an application under Order 47 Rule 1 & 2 CPC which was dismissed and the said order was challenged before this court. This court had also dismissed the petition on 19.09.2013. Hence, the trial court concluded that the application is a ploy to delay the trial of the case and dismissed the application.

7. The learned counsel appearing for the petitioners has submitted that the nature of the suit does not change by the proposed amendment. He relies upon the judgment of the Supreme Court in the case of *Sampath Kumar v. Ayyakannu, 2002 Law Suit (SC) 881* to contend that where for the stated relief, if it is permissible to file an independent suit, then same relief can be prayed by incorporating the relief in a pending suit instead of filing a new suit. He also relies upon the judgment of the Supreme Court in the case of *Raghu Thilak v. S.Rayyapan, 2001 RLR 217 (SC)* to contend that amendment should be liberally allowed to prevent multiplicity of proceedings.

8. Order 6 Rule 17 CPC reads as follows:

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. As per proviso, no application for amendment is to be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party court not have raised the matter before the commencement of trial.

10. In the present case trial has been completed.

11. A perusal of the application, filed by the petitioners shows that no reasons are given as to why the plea which is now sought to be raised could not be raised when the suit was filed. In the absence of any cogent reason, the trial court rightly inferred that the petitioners have not been able to satisfy the court that in spite of due diligence, he could not move the application for amendment of the plaint before.

12. Even otherwise, in my opinion, the effect of the proposed amendment was to change the entire nature of the suit. The suit is filed for permanent injunction to restrain the defendants from dispossessing the petitioners or from demolishing the factory shed based on their continuous possession for long period of time. This is now sought to be changed by seeking a decree of declaration that in case the petitioners are to be disposed from the suit

property then the petitioners would be entitled to be allowed an alternative site for their rehabilitation by the respondent DDA.

13. The judgment of the Supreme Court in the case of *Sampath Kumar v. Ayyakannu* (supra) does not in any manner help the petitioners. That was a case where before the commencement of trial, the plaintiffs therein had moved an application under Order 6 Rule 17 CPC. Suit had filed by the plaintiffs therein for permanent injunction. During the pendency of the suit, the defendants are said to have forcibly dispossessed the plaintiffs. In those facts the question arose whether it is permissible to convert a suit for prohibitory injunction into a suit for declaration of title and recovery of possession. The facts of those cases are entirely different.

14. I do not find any merit in the present petition. There is no material illegality in the impugned order and the same is accordingly dismissed.

JAYANT NATH, J.

SEPTEMBER 22, 2016/v