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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 90/2016 & C.M. No.22658/2015

MAHENDER SINGH & ANR

..... Petitioners

Through: Mr. Ajit Kumar, Advocate.

versus

ANIL DUTT

..... Respondent

Through: Mr. Inder Bir Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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24.08.2016

Caveat No.505/2016

Since the learned counsel has put in appearance on behalf of the caveator, the caveat stands discharged.

C.M. No.22658/2016 (for exemption)

Allowed, subject to all just exceptions.

C.R.P. No.90/2016

1. By the present petition, the petitioner seeks to impugn the order dated 8.4.2016 by virtue of which the application of the petitioner under Order VI Rule 17 read with Order I Rule 10 CPC was dismissed.

2. The petitioner has filed the present suit for permanent and mandatory injunction and damages. It was contended by the petitioner in the suit that he was residing at the property in Palam Gaon, New Delhi. The respondent No.1 is said to be the next door

neighbour and raising illegal construction of four storey commercial building without any sanctioned building plan. It was further contended that respondent No.1 has been negligent in not taking proper care during the construction resulting in seepage of water. Further, on 22.10.2010 during the construction, the wall of the building which was illegally raised by the respondent collapsed on the roof of the property of the petitioner. Hence, the present suit has been filed.

3. Admittedly, the evidence of the petitioner/plaintiff is complete.

4. By the present application, though it is termed as an application under Order VI Rule 17 read with Order I Rule 10 CPC, the petitioner essentially seeks to implead his wife as plaintiff No.2. The occasion to implead petitioner's wife arose as during the course of cross-examination by the petitioner, he has stated before the court that the title papers of the property in question are in the name of his wife.

5. The trial court by the impugned order dismissed the application in view of the proviso to Order VI Rule 17 CPC inasmuch as the petitioner has not been able to show due diligence on his part. It also concluded that the petitioner is setting up an entirely new case pleading that the suit property was purchased by the petitioner in the name of his wife out of love and affection whereas in the plaint, the petitioner has stated that he is the owner of the property.

6. I have heard the learned counsel for the parties. It is clear that the alleged incident which has lead to filing of the present suit took place on 22.10.2010. Now in 2016, the petitioner seeks to amend the

plaint by introducing his wife as plaintiff No.2. In the cross-examination of the petitioner on 20.7.2011, he had stated that he is not the owner of the property in question. Even after having made that statement in court, the petitioner has now in 2016 sought to file the present application for amendment.

7. Though the case of the petitioner is that he seeks amendment of the plaint, essentially what he seeks is to implead plaintiff No.2 without, in any manner, seeking to amend the plaint.

8. A perusal of the plaint also shows that the said pleading is replete with the contention of the petitioner being the owner of the suit property and the petitioner having suffered loss of more than Rs.10 lacs recovery of which is sought. None of this is sought to be amended and only the petitioner's wife is sought to be impleaded.

9. In my opinion, there is no infirmity in the order passed by the trial court. There is complete lack of diligence on the part of the petitioner in filing the present application. Even otherwise, the stand which is now sought to be taken is contradictory to the entire stand of the plaint. Further, the relief that the proposed plaintiff would seek would be barred by limitation as damages allegedly took place in 2010. As there is no merit in the petition, the same is accordingly, dismissed.

JAYANT NATH, J.

AUGUST 24, 2016
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