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

% Date of Decision: 05.10.2016

+ CM(M) 643/2016 & CM No.23970/2016 (interim orders)

SUBHASH CHANDER BHATIA Petitioner

Through Mr.Ankit Jain, Advocate

versus

RAJ KUMAR BHATIA Respondent

Through Mr.J.P.Sengh, Sr. Advocate with
Mr.Sanjay Rathi and Ms.Manisha
Mehta, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 11.04.2016 by which an application filed by the respondent under Order 6 Rule 17 CPC for amendment of the written statement was allowed.

2. Some of the relevant background facts of the case are that the suit is filed for possession and arrears of damages and mesne profits against the respondent for property No. 1/6, Ramesh Nagar (First Floor) New Delhi. Originally, the plaint was filed by the mother Smt. Sharda Rani Bhatia against her son, the respondent. It was stated that late Sh.Desh Raj Bhatia out of his own funds purchased the property measuring 100 sq. yards in Ramesh Nagar vide lease deed dated 13.02.1962. On the death of Sh.Desh Raj Bhatia, his children relinquished their rights and interests in favour of

their mother Smt.Lajwanti Bhatia i.e. the widow of late Sh.Desh Raj Bhatia. Smt. Lajwanti Bhatia who became owner of the property in her life time executed a Will in favour of her son Sh. Ratan Lal Bhatia. On the death of Smt. Lajwanti Bhatia, Sh. Ratan Lal Bhatia hence became the exclusive owner of the property. The original plaintiff is the widow of late Sh. Ratan Lal Bhatia and the respondent is the son of late Sh. Ratan Lal Bhatia

3. On the death of late Sh. Ratan Lal Bhatia who died intestate, the respondent and two other children, namely, Sh. Subhash Chander Bhatia who is now the petitioner and Smt. Shakti Bhatia executed a registered relinquishment deed of their shares in favour of their mother, namely, Smt.Sharda Rani Bhatia. Hence, it is stated that Smt.Sharda Rani Bhatia, the original plaintiff became the absolute owner of the suit property. She is said to have permitted her son, the respondent and Sh. Subhash Chander Bhatia, the petitioner to stay along with her in the suit property. The suit was filed against the respondent for recovery of possession, etc.

4. After filing of the suit, the original plaintiff is said to have executed a gift deed in favour of the present petitioner in 2003. Thereafter, the present petitioner was impleaded as petitioner No.2. Smt. Sharda Rani Bhatia died in 2005 and hence, the petitioner is now the sole plaintiff.

5. The respondent in his written statement has stated that the entire exercise was done under the influence of the petitioner who influenced his late mother to file the present suit. It is further stated that it was the petitioner who blackmailed and pressurised the respondent and exerted undue influence on the respondent to execute the relinquishment deed. Hence, it is stated that the said document is null and void. At best, the same was created at the behest and instigation of the petitioner. It is stated that

even after the alleged relinquishment deed, the parties have been living as a joint family and all the properties are joint. The respondent being the eldest son, in order to avoid acrimony in the family reached an understating with the petitioner, the younger brother and his mother. Accordingly, the respondent was to occupy the first and second floor along with terrace and his younger brother/the petitioner was to occupy the ground floor of the suit property exclusively. The mother was to live on the ground floor or with any of her sons at her pleasure. It is stated that the oral family arrangement was agreed upon and accordingly, the respondent is enjoying the first and second floor along with terrace and the younger brother is enjoying possession of the ground floor.

6. The issues have been framed on 14.08.2003 as follows:-

- “1. Whether the defendant is in occupation of the suit premises in the capacity of owner thereof? OPD
2. Whether the plaintiff is entitled for the relief of possession as prayed for? OPP
3. Whether the plaintiff is entitled for damages? If so at what rate and for which period? OPP
4. Relief.”

7. The respondent thereafter moved the present application under Order 6 Rule 17 CPC seeking an amendment. It is sought to urge by amendment that the property left behind by late Sh. Ratan Lal Bhatia i.e. the father of the parties has become coparcenary property for the rights of the grand children of late Sh. Ratan Lal Bhatia. It is sought to be added that the grand children of Ratan Lal Bhatia have derived their coparcenary rights in the property. Meaning thereby that the respondent's share in the property would be 1/12th with his two sons and the share of the mother Smt. Sharda Rani Bhatia

would also be $1/12^{\text{th}}$ along with her sons and daughters. Similarly, the share of the petitioner would also be being a coparcener would be $1/12^{\text{th}}$. It is also sought to be added that the respondent could not have transferred/ relinquished more than $1/12^{\text{th}}$ of his share in favour of his mother. Hence, Smt. Sharda Rani Bhatia did not possess full ownership rights of the property in person.

8. The trial court vide impugned order noted that the application for amending the written statement seems to bring on record certain material facts which may be relevant to decide the controversy between the parties and to adjudicate upon the rights of both the parties. The dispute involves as to whether the property is a coparcenary property or is a self acquired property of the original owner, namely, Desh Raj Bhatia which is a mixed question of law and fact. Hence, an opportunity should be given to the respondent to amend the written statement as the defence sought to be raised may be material to him in defending the suit. On issue of delay, the trial court noted that these facts were within the knowledge of the respondent earlier but considering the fact that the petitioner himself got the plaint amended in 2012, the respondent would be entitled to one more opportunity to amend the written statement.

9. I have heard the learned counsel for the parties.

10. Learned counsel appearing for the petitioner has vehemently argued that the proposed amendment is entirely frivolous, contrary to the settled legal position. It is stated to be an attempt to introduce a contention which on the face of it is erroneous and unsustainable. The amendment is mala fide and seeks to change the entire nature of the suit. He further submits that the trial has already commenced as the affidavit by way of evidence of the

petitioner has been filed and at this stage, in view of the proviso to Order 6 Rule 17 CPC, written statement cannot be amended. He relies upon the judgment of the Supreme Court in the case of *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors.*, (2009) 10 SCC 84. He also relies upon the judgment of the Supreme Court in the case of *Commissioner of Wealth-tax, Kanpur etc. vs. Chander Sen, etc.*, AIR 1986 SC 1753 to contend that the proposed amendment is contrary to the legal position on the face of it and is mala fide

11. Learned senior counsel appearing for the respondent stated that in 2012 when an amendment was allowed to the plaint on the request of the petitioner, the respondent had filed an amended written statement where a plea had been raised that the property was an ancestral property of the other coparceners as well. There was no objection raised on the said averment and hence, it cannot be said that this is a new plea. What is sought to be raised by amendment is only an elaboration of the plea already contained in the written statement. He also submits that normally, the rule is that while considering amendment to a written statement, a court should be more liberal.

12. 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.”

13. In *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors. (supra)*, the Supreme Court laid down the guidelines for amendment of the plaint as follows:-

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:-

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is *bona fide* or *mala fide*;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

14. In my opinion, the proposed amendment to the written statement cannot be termed to be *bona fide* and also not necessary for the purpose of determining the real question in controversy between the parties. Firstly, I

may note that the suit is filed in 2001. Written statement has been filed in 2003. There is not a whisper in the written statement about any HUF property or existence of coparceners. Based on the facts which were already known to the respondent in 2003, now 13 years later in 2016, the respondent seeks to make an averment of coparcener/HUF property. Merely because in 2013, in the written statement to an amended plaint, a line was inserted using the phrase “coparcener” would not justify the case of the respondent.

15. Secondly the averments which are sought to be introduced by way of an amendment, factually taken on the face value do not show the existence of an HUF property or that the respondent would be a coparcener having 1/12th interest as is sought to be claimed. The material averments which the respondent seeks to add are as follows:

“22. That as a matter of fact the property in question is the ancestral, joint Hindu Family Property as initially in view of the pleadings as well the same was purchased by Desh Raj Bhatia, grandfather of the plaintiff No.2 and the defendant.....

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24. That it is an admitted position that on the death of Ratan Lal Bhatia, he was survived by his widow Sharda Rani Bhatia, plaintiff No.2, Subhash Chander Bhatia, defendant Raj Kumar Bhatia and one daughter namely, Smt. Shakti Rani Bhatia and the plaintiff No.2, defendant and their sister was also having their two children. It is undisputed position that Ratan Lal Bhatia died intestate and the assets as well as the properties left behind by him stands inherited equally in the name of his legal heirs and thus the properties left behind by Ratan Lal Bhatia become the coparcenary property for the rights of the grand children of Ratan Lal Bhatia. It is submitted that the grand children of Ratan Lal Bhatia have derived their coparcenary rights in the properties left behind by Ratan Lal Bhatia. Meeaning thereby in case of plaintiff No.2, although he derived 1/4th share in the suit property but legally his own son and daughter being coparcener

then his share shall be termed as $1/12^{\text{th}}$ each and likewise the share of defendant which he derived as $1/4^{\text{th}}$ on the death of his father shall also be deemed as $1/12^{\text{th}}$ each with his two sons and the share of Sharda Rani Bhatia which she derived as $1/4^{\text{th}}$ is also to be legally deemed as $1/12^{\text{th}}$ each along with her sons and daughter.”

16. The learned Single Judge of this court in the case of ***Master Sushant vs. Sh. Sunder Shyam Singh*** in CS(O) 1240/2003 dated 12.12.2012 relying upon the judgments of the Supreme court in the case of ***Commissioner of Wealth-tax, Kanpur etc. vs. Chander Sen, etc.,(supra)*** and ***Yudhishter vs. Ashok Kumar, AIR 1987 SC 558*** recapitulated the law on an HUF property as follows:-

“3. Prior to passing of the Hindu Succession Act, 1956 if any person inherited ancestral properties, the ancestral properties in his hands automatically were HUF properties and to which the successors by four degrees automatically took a share. However, after passing of the Hindu Succession Act, 1956 merely because a person receives property from his paternal ancestors, the property in his hands is not an HUF property but the inheritance is as self-acquired property unless at the time of devolution there existed an HUF. The Supreme Court has specifically laid down this ratio in the judgments in the cases of Commissioner of Wealth Tax Etc. Vs. Chander Sen Etc. AIR 1986 SC 1753 and Yudhishter Vs. Ashok Kumar AIR 1987 SC 558 by observing that merely because a person who receives ancestral properties after passing of the Hindu Succession Act, 1956, the person who inherits will not receive the properties as HUF properties but as self-acquired properties i.e. ancestral properties did not automatically have the stamp of HUF properties. The only exception would be if a person after receiving self-acquired properties, he creates an HUF and in which case the members of the HUF including the sons would have rights to the HUF properties.

4. In the present case, since the only averments which are mentioned in the plaint are with respect to inheritance of the properties by the defendant i.e the father of the plaintiff from the grandfather of the plaintiff as ancestral properties, it cannot be said that the plaintiff can have any rights to the properties inherited by the defendant from his own father inasmuch as inheritance of properties by the defendant from his ancestors will only make the properties in the hands of the defendant as self-acquired properties and not HUF properties in view of the ratio of the judgments of the Supreme Court in the cases of Commissioner of Wealth Tax Etc. (supra) and Yudhishter (supra).”

17. In the light of the above legal position, it is clear that the averments as sought to be made by the respondent by amendment, on the face of it, do not lead to a conclusion of existence of an ancestral Joint Hindu Family property. What the respondent seeks to add in the written statement is that on the death of his father late Sh. Ratan Lal Bhatia, he is survived by his widow Smt. Sharda Rani Bhaita, the petitioner and the respondent and a sister of the parties, namely, Smt. Shakti Rani Bhatia. The petitioner, the respondent and the sister are having two children each. As Ratan Lal Bhatia died intestate, the assets and properties left behind by him have become coparcenary property for the rights of the grand children of Ratan Lal Bhatia. On a similar averment this court in the case of **Master Sushant vs. Sh. Sunder Shyam Singh(supra)** noted that the person who inherits will not receive the properties as HUF properties but as self acquired properties i.e. ancestral properties do not automatically have the stamp of HUF property.

18. It is no doubt true that while considering the proposed amendment, the merits or demerits of the proposed amendment are not be taken into consideration. However, as noted above, the proposed amendment on the

face of it is unsustainable. The facts sought to be introduced by an amendment do not and cannot lead to a conclusion of existence of a Joint Hindi Family on the face of it. It cannot be said that the proposed amendment would be necessary for the purpose of determining the real questions in controversy between the parties. The amendment on the face of it appears to be mala fide with intent to further delay a suit which is already 15 years old.

19. In this context, reference may be had to the judgment of a Division Bench of this court in the case of *S.Pritam Singh & Ors. v. Ram Narain Vij*, 77 (1999) DLT 76/(MANU/DE/0634/1999), where the court was dealing with an amendment sought to be introduced 20 years after filing of the suit. The Division Bench held as follows:

“6..... The amendments now sought were opposed as being mala fide and intended to delay and obstruct the course of justice. The original written statement was filed as far back as on 20th April, 1972. The present amendment application had been moved in 1994 i.e. after nearly 20 years. Besides all the pleas, which are now sought to be taken were available to the appellant at that time. There is considerable merit in the submission of the respondent that the amendment has been sought mala fide and belatedly, with the ulterior object of defeating the ends of justice and to somehow delay and stultify the legal proceedings. The application for amendment is highly belated and as noticed above is mala fide and deserves rejection on this ground. The merits/demerits of the amendments sought are not to be considered at the time of allowing or disallowing the application. However, we find that in this case even if the legal pleas which are sought to be raised were considered, it would not make any difference since these are devoid of merit.....”

20. In my opinion, the impugned order suffers from material illegality as

it failed to consider the settled legal position regarding amendments. The impugned order is accordingly quashed and the application for amendment filed by the respondent shall stand dismissed.

21. The petition is accordingly allowed.

JAYANT NATH, J.

OCTOBER 05, 2016
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