

\$~A-31

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

+ CM(M) 720/2016 & CM Nos.26699/2016 & 26700/2016

RAM KUMAR & ANR Petitioner

Through Mr.Ashok Chhaparia, Adv.

versus

RAJ KUMAR RAJORA Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **27.07.2016**

1. By the present petition the petitioner seeks to impugn the order dated 11.4.2016. The respondent filed a suit for recovery of Rs.8 lacs alongwith interest accrued. It was the contention of the respondent/plaintiff that he was the sole owner of the suit property, namely, back side Second Floor (without roof rights) out of property bearing Municipal No. 2162/T-6A, land measuring 25.50 sq.yards, part of Khasra No.768/33 with free hold proportionate rights of the land thereunder, situated in the area of village khampur in the abadi of Main Patel Road, New Delhi. The respondent claims to have entered into an agreement to sell with the petitioner No.1 on 19.8.2013 whereby the property was agreed to be sold for a consideration of Rs.18 lacs.

2. The case of the respondent is that for the reasons which are stated in detail in the plaint a sale deed was executed in favour of the petitioner No.2 on 10.1.2014 but the petitioners have paid only a consideration of Rs.10 lacs

and have not paid the balance consideration of Rs.8 lacs to the respondent. Hence, the respondent had filed the present suit seeking a decree for the sum of Rs.8 lacs.

3. Subsequently, the respondent filed an application under Order 6 Rule 17 CPC seeking an amendment in the plaint whereby additional relief of cancellation of sale deed dated 10.1.2014 was sought. Recovery of Rs.8 lacs was an alternative relief prayed. The trial Court by the impugned order has allowed the application.

4. Learned counsel appearing for the petitioner submits that the nature of the suit has changed by permitting the respondent to add the relief of cancellation of the sale deed. He submits that no such alternative relief can be allowed. He relies upon the judgment of this Court in *M/s. Bank Kreiss AG vs. Ashok K.Chauhan and others, AIR 2004 Delhi 42*.

5. A perusal of the impugned order shows that the Trial Court concluded that the factual matrix for the relief sought under the proposed amendment is already set out in the plaint. Hence, the alternative additional relief for cancellation of sale deed as sought by way of amendment follows from the case already set up by the respondent in the plaint. The Trial Court also noted that the amendment is necessary for determining the real question in controversy between the parties should be allowed. The court also concluded that the relief sought would not change the nature of the suit.

6. In my opinion, there is no infirmity in the impugned order. The basis of alternative prayer for cancellation of the sale deed has already been stated in the plaint by the respondent. In detail it is pointed out that as per Agreement to Sell respondent was entitled to receive a sum of Rs.18 lacs. However, the petitioner has paid Rs.10 lacs to execute and register the sale

deed dated 10.1.2014 in favour of the petitioner. Hence, the balance amount was sought.

7. Reliance of the petitioner on *M/s.Bank Kreiss AG vs. Ashok K.Chauhan and others* (supra) is misplaced. That was a case where the Court came to a conclusion that the alternative plea which was sought would completely alter the structure or frame of the suit.

8. There is no merit in the petition. Same is dismissed.

9. On request of counsel for the petitioner, the petitioner is permitted to file the written statement to the amended plaint within four weeks from today.

JAYANT NATH, J

JULY 27, 2016

n