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

+ CM(M) 1241/2013 & C.M. No.18317/2013

SHRI SHARAD KUMAR SUD & ORS

..... Petitioners

Through Ms. Sonali Malhotra and Mr.Amit Sanduja, Advs.

versus

SMT KAMLA SUD & ORS

..... Respondents

Through Ms. Anuradha Dutt, Ms. Divya Balla and Ms. Atishree, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **04.05.2016**

The petitioners are aggrieved by the impugned order dated 10.09.2013 wherein the application filed by the plaintiff seeking an amendment in the plaint under the provisions of under Order 6 Rule 17 of the CPC had been permitted. Amended plaint had been directed to be filed. The petitioners/defendants No. 1 to 4 are aggrieved by the said finding.

On behalf of the petitioners, it has been contended that the impugned order suffers from an illegality for the reason that the amendment was clearly time barred. Attention has been drawn to the written statement filed by defendants No. 1 to 4 which had been filed on 02.08.1996; submission being that in the written statement it was disclosed that the suit property qua the share of defendants No. 1 to 4 had been sold by them on 26.12.1995 by the two separate sale deed.

The application seeking amendment of the plaint (to incorporate the plea that these sale deeds were anti-dated) was filed on 10.09.2013. This plea was permitted but being time barred, the impugned order is liable to be set aside. Learned counsel for the petitioners in support of her submission that the time-barred claim cannot be entertained has placed reliance upon a judgment of a Bench of this Court in 2006 IV AD (Delhi) 620 A.F. Investment Ltd. Vs. M/s Raja Ram Bhasin and Co.

Per contra, this position is disputed by the learned counsel for the respondents. She submits that this is an arguable point and the question of limitation in the factual matrix of the instant case had to be kept open. Reliance has been placed upon (2001) 2 SCC 472 Ragu Thilak D. John Vs. S. Rayappan and Others as also another judgment reported as (2004) 6 SCC 415 Pankaja and Another Vs. Yellappa (dead) by LRs. And other to support this submission.

Record substantiates the submission of the learned counsel for the respondents. In the application seeking amendment, the plaintiff had clearly averred that it was only on 04.03.2013 that the plaintiff had come to through common relatives of defendants No. 1 to 5 that defendants No. 1 to 4 had conspired and collusively decided to execute the ante-dated sale deeds and this was to defeat the pre-emptory right of the plaintiff. Attention has also been drawn to an order passed on an application filed by the plaintiff under Order 1 Rule 10 of the CPC which application had been decided and disposed of vide order dated 06.03.2007. That order has since attained a finality; it has not been challenged. The newly proposed defendants

have also filed their written statement. Learned counsel for the plaintiff/non-applicant rightly submits that if this amendment to incorporate the plea that the sale deeds were anti-dated is not permitted, the order passed on her application under Order 1 Rule 10 of the CPC would in fact be an infructuous and paper order; vide order dated 06.03.2007 (on the application under Order 1 Rule 10 of the CPC filed by the plaintiff), the newly added defendants were the subsequent purchasers and consequent to the aforementioned sale deed dated 26.12.1995 and the plaintiff would be prejudicially affected as an order which has now attained a finality (order dated 06.03.2007) would in fact become redundant if this plea of amendment is not permitted to be taken on record. Moreover in view of the specific averments in the application under Order 6 Rule 17 of the CPC which are to the effect that it was only on 04.03.2003 that the plaintiff learnt about these anti-dated sale deeds, the question of limitation necessarily became an arguable point and has to be kept open.

In this context, the following observations of the Apex Court in Pankaja and Another (supra) are relevant. They read as under:-

“The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of

justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends oh the factual background of that case.”

In the factual matrix while exercising supervisory jurisdiction, this Court holds that there is not patent illegality in the impugned order which calls for any interference. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 04, 2016

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