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

% Date of decision: 07.09.2016

+ CM(M) 864/2016 & CM Nos.32166/2016

CHANDRO DEVI & ORS Petitioners
Through Mr.Alok Kumar & Mr.Neeraj
Gupta, Advocates

versus

M/S MANAV BHARATI INDIA
INTERNATIONAL SCHOOL Respondent
Through Mr.R.K.Vats, Advocate

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 11.5.2016 by which an application filed under Order 6 Rule 17 CPC filed by the respondent/plaintiff for amendment of the plaint was allowed.

2. The respondent/plaintiff has filed a suit for recovery of possession. As per the plaint, late Shri Laxmi Chand had been given the job of a mali by the respondent and he worked in that capacity till 16.9.1995 when his services were terminated. The said Laxmi Chand/original occupant even after termination continued to reside in a temporary shed covered with

asbestos sheets hung on boundary wall at the extreme corner on the eastern side of the school campus.

3. Laxmi Chand expired on 28.11.2000. As none of the LRs of Late Laxmi Chand were impleaded the suit stood abated. However, vide order dated 21.12.2012 the trial court set aside the order of abatement. The said order was also confirmed by this court.

4. It is the submission of the respondent that during the period of abatement of the suit the petitioners have altered the area of the suit property in their possession. Hence, application has been filed for amendment of the plaint to incorporate subsequent events. As per the application it is sought to be urged that the petitioner has occupied the additional area illegally. Accordingly, consequential reliefs have also been sought to be added.

5. The trial court by the impugned order allowed the application of the respondent for amendment noting that the amendment would not cause any injustice to the petitioner and are necessary for the purpose of determining the real question in controversy.

6. I have heard learned counsel for the parties. Learned counsel for the petitioner has submitted that he has perfected his title to an area by means of adverse possession and hence the present application cannot be permitted. He has also submitted that there are two different cause of actions which the respondent cannot consolidate. One cause of action is recovery of an area which as per the respondent was given on account of the fact that late Shri Laxmi Chand was in service of the respondent.

Second one is that some portion of the property has been encroached upon by the petitioner. He submits that this amounts to two different cause of actions which cannot be joined together.

7. In my opinion, there are no reasons to interfere with the impugned order. All that the respondent is doing is adding relief based on subsequent events. The case of the respondent is that after the abatement of the suit the LRs of late Shri Laxmi Chand have encroached upon additional areas. Hence, the plaint is sought to be amended to incorporate the relief of possession for the extended areas also.

8. The proposed amendments are based on subsequent events. They do not change the nature of the suit. It also does not seek to add any additional facts or reliefs which can be said to be barred by limitation. Joinder of cause of action is also permissible when parties are common. Further at this stage, no adjudication on the merits is permissible.

9. In view of the above, there is no merit in the present petition and the same is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

SEPTEMBER 07, 2016

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