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

+ C.R.P. 156/2016

BIMLA DEVI (DECEASED) THR LRS & ORS..... Petitioners
Through Mr.Mahesh Thakur, Advocate.

versus

BHARAT SINGH YADAV & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **23.09.2016**

CM No. 34938/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 156/2016 and CM No. 34939/2016 (stay)

1. By the present petition, the petitioner seeks to challenge the order dated 30.07.2016 passed by the trial court dismissing an application under Order 6 Rule 17 CPC filed by the petitioner/plaintiff.
2. The plaintiff has filed a suit for partition and rendition of accounts. It is stated in the plaint that the predecessors of the plaintiff/petitioner and the defendants/respondents were co-owners and in joint physical possession of the land in question. It is stated that the said land is enclosed by a boundary wall and there are seven rooms which were raised by the plaintiff and the father of the defendants. Tenants have been inducted in the said rooms and the parties have been collecting rent which was being shared by the parties

in accordance with their share in the land. Hence, a suit was filed seeking a decree of partition and rendition of accounts.

3. The present application was moved for amendment of the plaint. The application is silent about the amendments which are sought to be carried out. Learned counsel for the petitioner submits that the proposed amendments had been stated in the proposed amended plaint and have been noted by the trial court in the impugned order. The copy of the impugned order shows that what the plaintiff proposed to amend was the prayer clause to add (i) the relief that the plaintiff/petitioner be put in separate possession of the share allotted to them and (ii) the court may declare the sale deeds executed by the defendants no.1 and 2 in favour of defendants No. 3 and 4 is null and void.

4. A perusal of the impugned order shows that the trial court noted that the evidence of PW-1 has been completed and thereafter, the present application has been filed. In terms of proviso to Order 6 Rule 17 CPC, the trial court noted that no averment were made in the application that in spite of due diligence, the parties could not have raised the matter before the commencement of trial. Hence, the application was dismissed.

5. Learned counsel for the petitioner submits that as far as the first prayer is concerned, namely, that the plaintiff/petitioner be placed in separate possession of the share allotted to them, it is closely linked to the relief already sought, namely, partition of the property. It flows from the relief of partition and cannot be said to be a relief which would in any manner cause prejudice whatsoever to the defendants. Regarding the second relief of declaration of sale deed as null void, he submits that he does not press this relief before this court.

6. The fact is that the plaint is filed seeking the relief of partition. The plaint also avers that the parties are co-owners and they are also in constructive possession of the property as the tenants are there who have been inducted by the predecessors of the plaintiff and the defendants jointly. Hence, the relief that is now sought as per the application filed by the petitioner clearly connected to the relief already sought.

7. In the application, it is stated that they were advised that in a suit for partition separate possession of share can also be sought and that the amendment which is sought to be introduced now is purely technical and formal in nature. It has been orally averred that there was a lapse on the part of the plaintiff earlier and hence, the attempt to rectify the said lapse.

8. The amendment which is now proposed, would flow from the relief already sought for. No additional evidence would be necessary. Hence, there is material irregularity committed by the trial court in dismissing the application. Being purely formal in nature, the application is allowed to the extent of amendment to the prayer clause seeking separate possession of the share allotted to the petitioner. The petition stands allowed as above subject to payment of costs of Rs.5,000/-

JAYANT NATH, J

SEPTEMBER 23, 2016
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