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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 572/2015 & C.M. No.10791/2015 (stay)

SHARAD KUMAR

..... Petitioner

Through Mr. Kailash Pandey and Mr. Ranjeet Singh,
Advs.

versus

NMDC LIMITED

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **14.01.2016**

The petitioner is aggrieved by the impugned order dated 21.02.2015 wherein his application under Order 6 Rule 17 of the CPC seeking amendment in the plaint had been declined.

Arguments have been heard.

Record shows that the present suit had been filed by the plaintiff seeking possession of the suit property along with arrears of rent/mesne profits. The property had originally been owned by Kamla Devi, the mother of the petitioner. The petitioner was co-owner to the extent of 1/4th share which was after the demise of his mother who had expired on 17.10.2001. The lease qua the suit property had been extended firstly on 03.03.2007 for a period of three years and again on 08.02.2010. The lease thereafter expired by efflux of time. Tenancy became a monthly tenancy. The petitioner was receiving his 1/4th share of the rent.

On 27.07.2011, the present suit had been filed for possession, mesne profits and damages which is presently pending before the District Court,

Patiala House Courts. Written statement has been filed.

During the pendency of the suit, the other co-owners Saroj Rani Mandal and Karan Mandal vide release deed dated 09.12.2013 had transferred their right in favour of the petitioner; the petitioner has now become 3/4th owner of the suit property. On 21.02.2015, the plaintiff filed the present application under Order 6 Rule 17 of the CPC seeking an amendment in the suit in view of this release deed which has been executed in his favour by the other legal heirs of his deceased mother. This application was dismissed by the impugned order.

The vehement submission of the learned counsel for the respondent is that the amendment would change the nature of the suit; it would prejudice him as three of the co-owners are on his side and they are not seeking his eviction from the suit property.

This Court is of the view that the amendment would not change the nature of the suit as the suit continues to remain a suit for possession and mesne profits; it is only a factual fact which is sought to be brought on record which is the submission of the petitioner; that in view of the release deed dated 09.12.2013, he has now become owner of the 3/4th of the suit property. His earlier share was only up to 1/4th. Needless to state that the position at law is that an amendment only states the factual issue; the fact pleaded has to be proved in accordance with law.

This Court has also been informed that although issues had been framed on 12.05.2014 but the trial has not yet commenced. The Apex Court in (2001) 8 SCC 115 Dondapati Narayan Reddy Vs. Duggireddy Venkatanarayana Reddy and Others had held that where the amendment is not prejudicial to the opposite party, a hyper technical approach should not be adopted and the approach should be to advance the interest of justice and

to avoid multiplicity of suits. The proviso to Order 6 Rule 17 of the CPC even otherwise stipulates that an amendment can be permitted even after trial has commenced if the party could not have raised this matter earlier. Admittedly the release deed dated 09.12.2013 had been executed in favour of the petitioner during the pendency of the suit and as such the question could not have been raised by him at the time of the filing of the suit. The pendency of the other applications pending inter-se the parties which included the applications under Order 1 Rule 9 of the CPC filed by the respondent, under Order 7 Rule 11 of the CPC and under Order 12 Rule 6 of the CPC which had been agitated right up to the High Court had also de-railed the proceedings.

This Court is of the view that no prejudice would be suffered by the respondent in case the amendment is allowed. It will not change the nature of the suit. It would in fact prevent multiplicity of proceedings. Accordingly, the impugned order dated 21.02.2015 is set aside and the amendment prayed for in the plaint is allowed. This order is passed subject to payment of costs of Rs.10,000/-.

Petition disposed of.

INDERMEET KAUR, J

JANUARY 14, 2016

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