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

+ **CM(M) 966/2016**

VANDANA SRIVASTAVA

..... Petitioner

Through Mr.Jay Savla and Ms.Amrita Mishra,
Advs.

versus

NEETU JAIN & ANR

..... Respondent

Through Ms.Pusshp Gupta, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

26.09.2016

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CM No.35432/2016

Exemption allowed, subject to just exceptions.

CM(M) 966/2016 & CM No.35431/2016

1. By the present petition the petitioner seeks to impugn the order dated 5.9.2016. The petitioner has filed the present suit for cancellation of registered Sale Deed dated 23.1.2013 between the plaintiff and defendant and for declaring the plaintiff as the sole owner of the suit property. Thereafter an application for amendment of the plaint was filed. At that stage, the matter was pending before this Court and this court on 5.2.2015 allowed the application for amendment. Thereafter the petitioners placed on record the amended plaint as per directions of 5.2.2015. The respondents raised an objection pointing out that the amended plaint placed on record is not as per order of this court dated 5.2.2015 and has incorporated averments

which were not subject matter of the amendment application. An application to that effect was filed.

2. In the meantime, the petitioners also moved another application for amendment where certain additional facts were sought to be placed on record.

3. The trial court by the impugned order noted that an amendment which was never sought for has been added in the amended plaint and the same has to be rejected straightway. It was further noted that the misuse of authority by a litigant compels the court to bring the litigant back to the original position. Accordingly, the trial court accepted the application of the respondent and rejected the amended plaint filed by the petitioner pursuant to order dated 5.2.2015 and treating the amendment application as not allowed at any time. As far as the second application for amendment was concerned the trial court held that the said application is also now not maintainable and dismissed the same.

4. Learned counsel for respondent No.2 has entered appearance on receipt of an advance copy of the petition. She submits that she has no objection if the amendment which was originally allowed by this Court on 5.2.2015 is permitted to be allowed. She submits that any other amendment which is now sought by the petitioner i.e. which was added to the amended plaint without permission of the court or which is a subject matter of the fresh amendment application filed under Order 6 Rule 17 is not permissible as it would change the nature of the case.

5. Learned counsel for the petitioner submits that he confines his relief only to the permitted amendments which were allowed by this court on 5.2.2015. As the respondents have no objection, this limited prayer sought

by the petitioner is allowed.

6. Petition is allowed and the impugned order to that effect is modified. Petitioner may place on record the amended plaint as per directions dated 5.2.2015 passed by this Court in IA No.24109/2014. Other than the amendment which were subject matter of the said application no other amendment shall be made in the amended plaint.

7. Amended plaint be filed within 10 days from today. A copy of this order be given dasti to counsel for the petitioner, as prayed.

JAYANT NATH, J

SEPTEMBER 26, 2016

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