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

% **Date of Decision: 06.10.2016**

+ CM(M) 990/2016

SONA DEVI & ANR Petitioner

Through Mr.Dinesh Garg, Adv.

versus

AJAY KUMAR Respondent

Through Mr.D.K.Singh, Mr.Gaurav Singh and
Ms.Shanti, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition the petitioner seeks to impugn the order dated 2.8.2016 by which an application filed by the petitioner under Order 6 Rule 17 CPC was dismissed. When the matter came up for hearing on 30.09.2016, despite receipt of advance copy of the petition none had appeared for the respondent. In the interest of justice notice was issued to the respondent returnable for today. On 30.09.2016 the Court had recorded the background disputes as follows:-

“2.The petitioners have filed a suit for permanent and mandatory injunction, recovery of damages and mesne profit against the respondent/brother of petitioner No.2. It is contended in the plaint that petitioners are the husband and wife and that petitioner No.2 bought the suit property and transferred it to the name of petitioner No.1. The respondent has been permitted to reside in a two room set. In the written statement filed by the respondent the respondent has stated

that the mother of the respondent/petitioner No.2 was the owner of the property and it is further stated that the family of respondent and petitioner No.2 are residing in the property since purchase of the same by the mother Ms. Dropti who died on 6.1.2004.

3.In these circumstances, the petitioner moved the present application under Order 6 Rule 17 CPC seeking to amend the plaint by adding the relief of declaration in favour of petitioner No.1 thereby declaring her to be having a title better to any other person in the suit property bearing No.D-21/B-25, Vijay Colony, Gali No.6, 3rd Pushta, Usmanpur, Delhi-53. Other amendments regarding alleged fraudulent possession of documents is also sought to be introduced.

4.The trial court vide impugned order noted that the evidence of the petitioner/plaintiff has been completed and the petitioner No.1 Sona Devi has been cross-examined and discharged on 21.11.2015. Written statement was filed in March 2015 and Issues were framed on 16.4.2015. Now, belatedly the petitioners have approached this court for amendment. The trial court concluded that the petitioners ought to have acted diligently by taking advise of not only one advocate rather from any number of advocates. It also noted that in case the amendment is allowed it would relegate the case back to the stage of completion of pleadings, rather would set up a wrong precedent for litigating parties, not acting promptly as a reasonable prudent person. It also noted that the contention of the petitioner that petitioner No.2 is illiterate is wrong in view of statement of the said petitioner No.2 recorded in court. Hence, the application was dismissed.

5. A perusal of the plaint shows that it was the case of the petitioner that they are the owners of the suit property and hence had sought mandatory injunction against the respondent. Implicit in the averments of the plaint are that the petitioners have title to the property. On account of the

stand taken in the written statement the necessity arises of seeking amendment in the prayer clause and another paragraph to seek a declaration of title. The alleged rights of the petitioner to the suit property cannot prima facie be defeated on technical grounds of delay in having filed the present application. I may note that in the application filed by the petitioner it is stated that the petitioners are “mostly illiterate”. Hence, it was not their case that they are totally illiterate. The finding of the trial court that the petitioner No.2 has studied upto 10th class and hence wrong averment has been made would not be correct in these circumstances.”

2. Learned counsel appearing for the respondent submits that the evidence of PW1 has already been completed. He further submits that no material ground is given as to why the petitioner seeks to amend the plaint. The only ground given is that the counsel for the petitioner was not duly diligent. He submits that this could not be a ground to permit amendment of the plaint at this belated stage.

3. To look at accepted principles of amendments, reference may be had to the judgment of the Supreme Court in the case of **‘Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.’, 2009 (13) SCALE 241.**

The Hon’ble Supreme Court in para 67 held as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerges which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

4. The Supreme Court in the case of ***Abdul Rehman & Anr. Vs. Mohd. Ruldu & Ors., (2012) 11 SCC 341*** in paras 17 and 18 held as follows:-

“17. In ***Pankaja v. Yellapa***, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

5. The proposed amendment is bona fide. The suit is filed based on title. As the respondent in the written statement disputes the title, the petitioner seeks to add the relief of declaration of title.

6. The contention of the respondent which was also accepted by the trial court that there is a delay in moving the present application is erroneous.

The need to file the application arose in 2015 when the respondent filed his written statement disputing the title of the petitioner. The application is filed in 2016. No doubt, the petitioner could have been more diligent and but has allowed one year to lapse wherein the part evidence of the petitioner has also commenced. However, the rules of procedure are handmaid of justice. To disallow the application would be too harsh on the petitioner.

7. I may also point out that the learned counsel appearing for the respondent has pointed out that the respondent has also filed a suit for partition and declaration of the property in question. In the light of the said steps taken by the respondent, it is in the interest of justice that the petitioner is permitted to amend the plaint. The proposed amendment is bona fide and would be necessary for adjudication of the real question in controversy between the parties.

8. At this stage, learned counsel for the parties agree that it will be in the interest of justice that this suit and the suit filed by the respondent for partition which is pending in the court of Shri G.N.Pandey, Additional District Judge, Karkardooma Courts be heard by the same court. Learned counsel for the petitioner submits that he will move a proper application in accordance with law as there are other parties also in the suit which is filed by the respondents. In view of the above, the present petition stands disposed of.

JAYANT NATH, J

OCTOBER 06, 2016

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