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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 899/2015 & C.M. No.21272/2015

SANJAY BHARGAVA

..... Petitioner

Through Mr. Sudhir Nandrajog, Sr. Adv. with
Mr.Shankar Kumar, Adv

versus

VIJENDER SINGH TOMAR

..... Respondent

Through Mr. R.K. Bindal and Mr. Anurag Bindal,
Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.01.2016

The order impugned before this Court is the order dated 31.08.2015. Vide the impugned order, the application filed by the plaintiff under Section 151 of the CPC praying that he may be permitted to sign the plaint was disallowed.

Record shows that the present suit is a suit for possession, recovery of rent, damages and mesne profits. It is qua the property bearing No.Flat No.A-30/1, SFS-II, ground floor, DDA, opposite Anupam Cinema, Saket, New Delhi. The plaint was signed and verified by the original plaintiff Shobha Bhargave. She had expired on 26.04.2001. The plaint was counter-signed by her Advocate. In the course of the proceedings, the written statement was filed. Issues were framed. The plaintiff entered into the witness box on 18.09.1997 on which date in her examination in chief she had categorically stated that the plaint has been signed and verified by her. On a subsequent date i.e. on the date of her cross-

examination i.e. on 20.11.1998 that she has stated that the plaint has not been signed by her at point 'A' and her signature did not appear at point 'B'. The plaintiff had expired on 26.04.2001. On 28./01.2004, the present petitioner (Sanjay Bhargava, her nephew) was impleaded as her legal heir. The case was being prosecuted by him. It was only at the stage of final arguments that the petitioner realised that the deceased in one part of her examination denied that she had signed the plaint; accordingly the present application was filed. It is categorically stated that it was due an inadvertence that the plaintiff had made such a statement; she was always prosecuting her case diligently.

Learned senior counsel for the petitioner submits that it is not as if that there is difference of opinion between the legal representative of the deceased and the deceased; the deceased was all along bonafidely prosecuting her case. This was a curable defect and this defect can be cured at any stage. To support this submission, learned counsel for the petitioner has placed reliance upon AIR 2006 SC 269 Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Anr.

These arguments have been refuted. Learned counsel for the respondent submits that this defect is not curable; the plaintiff has made a clear statement that she has not signed the plaint.

This Court is not in agreement with this submission of the learned counsel for the respondent. This Court notes that the plaint was being prosecuted diligently. The plaintiff had expired on 26.04.2001. Her legal representative i.e. the petitioner was brought on record on 28.01.2004. The evidence of the plaintiff shows that in one part of her cross-examination, she had clearly stated that she had signed the plaint. The

suit was filed in the year 1994 and the plaintiff was prosecuting her case diligently and on 18.09.1998 she had reiterated that the plaint had been signed by her and it was only on 20.11.1998 (now heavily relied upon by the learned counsel for the respondent) that she had stated that the plaint has not been signed by her. This was most likely due an inadvertent error. The submission of the learned counsel for the respondent that this defect cannot now be rectified is thus a submission which is without any force.

Under Order 6 Rule 14 of the CPC, every pleading is required to be signed by a party or his duly authorized agent. If this is missing, the same can be rectified not only at the original stage but even by the Appellate Court when such a defect comes to its notice. This defect had come to the notice of the legal representative of the deceased plaintiff only at the time when he was preparing for final arguments and when he had filed this application which the Trial Court had illegally ignored.

The impugned order is liable to be set aside. It is accordingly set aside. The plaintiff is permitted to sign the plaint.

Petition disposed of.

INDERMEET KAUR, J

JANUARY 21, 2016

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