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

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Date of Decision: 21.10.2016

+ CM(M) 1214/2015 & CM No.30081/2015

M/S JANAKI DAS RAM CHAND TRUST Petitioner
Through Mr.P.R.Aggarwal, Advocate

versus

PRAVEEN KAUSHAL & ORS Respondents
Through Ms.Rajni Anand, Advocate for R-1
Mr.Y.R.Sharma, Adv. for R-2 & 3

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 12.10.2015 by which an application under Order 6 Rule 17 CPC for amendment of the plaint was allowed.
2. Respondent No.1 filed a suit for permanent and mandatory injunction against the petitioner and respondents No.2 and 3. Late husband of respondent No.1 and respondent No.2 were real brothers. Respondent No.3 is the nephew of respondent No.1 i.e. son of respondent No.2. Respondent No.1 claims to have acquired tenancy right through her husband after his death in respect of the suit property. As per the prayer in the plaint, respondent No.1 seeks a decree of permanent injunction in favour of the plaintiff and against the defendants to restrain them from illegally and

unlawfully dispossessing her from the entire property, i.e. 164, Katra Mashroo, Dariba Kalan, Chandni Chowk, Delhi more specifically from the barsati floor. Admittedly, the petitioner is the owner of the suit property.

3. Thereafter, respondent No.1 moved an application under Order 6 Rule 17 CPC for amendment of the plaint. It was averred that during the pendency of the suit, respondents No.2 and 3 in connivance with the petitioner have thrown out the belongings of respondent No.1 on 09.11.2014 from the suit premises and thereby respondent No.1 has been forcibly dispossessed. Based on this averment, additional facts are sought to be added, prayer clause is also sought to be amended now seeking a decree of declaration that the plaintiff/respondent No.1 is a co-tenant and also seeking a decree of possession of the barsati floor of the suit property.

4. The trial court by the impugned order noted that the petitioner and respondents No.2 and 3 have denied that respondent No.1 was in possession of the barsati floor or she has any right in the suit property. It was noted that as per the petitioner, that the tenancy is with respondents No.2 and 3. Submission of respondents No.2 and 3 was also noted that the husband of respondent No.1 had abandoned his tenancy rights in the suit property due to an oral family settlement. The trial court also noted about a letter written by the petitioner where he has denied the possession of respondents No.2 and 3 on the barsati floor/room located on second floor. It has also noted that during arguments it was agreed by the parties that there exists two barsaties/rooms on the second floor. In view of the fact that what was sought to be added in the plaint were facts on account of subsequent events, the trial court allowed the application for amendment of the plaint.

5. The learned counsel for the petitioner has vehemently argued that in a

separate suit filed by respondents No.2 and 3, respondent No.1 had taken a specific plea that she is not in possession of the property. Hence, it is urged that by allowing the present amendment application the nature of the suit undergoes a complete change and hence, the trial court has wrongly allowed the amendment.

6. A perusal of the written statement filed by the petitioner shows that this plea of an earlier suit having been filed by respondents No.2 and 3 in which the petitioner was not a party has been taken by the petitioner in his written statement.

7. The learned counsel for respondent No.1 has denied that any admission was made that she was not in possession of the suit property. She submits that needless confusion was created that only one room is there on the barsati floor. There are actually two rooms on the barsati floor and respondent No. 1 was in possession in one of the rooms. Hence, she submits that there is no admission made by respondent No.1 as claimed by the petitioner.

8. In any case, it is the averment of respondent No.1 that she was in possession of the suit property when she filed the suit. It is her stand that she has been dispossessed after filing of the suit and hence she seeks relief of possession of the suit property as a co-tenant. The amendment which is sought is based on events which as per respondent No.1 have occurred after filing of the suit. It cannot be said that the amendment sought changes the nature of the suit.

9. I may add that at this stage I am not concerned with the merits or demerits of the contentions which are sought to be added by respondent No.1 by way of amendment. The merits or demerits of the contentions

sought to be added have to be adjudicated upon by the trial court in accordance with law. At this stage, respondent No.1 cannot be non-suited on the application for amendment on the plea that earlier she had made an admission that she is not in possession of the suit property. These are disputed questions which will have to be gone into at the time of the trial.

10. In this context, reference may be had to the judgment of the Supreme Court in the case of *Lakha Ram Sharma vs. Balar Marketing Private Ltd., (2008) 17 SCC 671*, relevant portion of which reads as follows:-

“4. It is settled law that while considering whether the amendment is to be granted or not, the court does not go into the merits of the matter and decide whether or not, the claim made therein is bona fide or not. That is a question which can only be decided at the trial of the suit.....”

11. In the light of the above, there is no merit in the present petition. There are no reasons to interfere with decision of the trial court. The present petition is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

OCTOBER 21, 2016/v