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

+ **CM(M) 57/2016**

GURDASS

..... Petitioner

Through Mr. T.N. Tripathi and Mr. Khursheed
Ahmed, Advocates.

versus

JAI BHAGWAN SINGH & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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08.08.2016

CM Nos. 2098-99/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 57/2016 and CM No. 2097/2016 (stay)

1. By the present petition, the petitioner seeks to challenge the order dated 15.09.2015 by which the application filed by the respondents under Order 6 Rule 17 CPC was allowed subject to payment of costs of Rs.3,000/-.
2. The brief facts are that respondent No.1 filed the suit for possession against respondent No. 2. It was averred in the plaint that the plaintiff is the owner of the suit property bearing No.58, Mangolpur Kalan, Delhi-85. Subsequently, it transpires that respondent No. 2 filed a written statement stating that respondent No. 1 wanted to grab the property by way of this suit and has mentioned the wrong property number. The property has number 59

and not 58 and property No.59 is owned by the petitioner.

3. The petitioner moved an application under Order 1 Rule 10 CPC for impleadment as a defendant in the suit. On 26.03.2011, the application of the petitioner was allowed and he was impleaded as defendant No. 2. He has filed a written statement on similar lines as respondent No.2.

4. Subsequently, now in November 2013, respondent No.1 filed the present application for amendment. The plaintiff/respondent No.1 amongst other amendments also seeks amendment of the prayer clause including seeking a decree for declaration that the suit property bears No. 58 shown in red colour in the site plan and seeking a declaration that the plaintiff is the absolute owner of the property bearing No. 58 shown in red colour in the site plan. Reliefs of possession, damages, permanent injunction, etc. are also sought.

5. The trial court noted that as per Order 1 Rule 10(4) CPC where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such a manner as may be necessary. The trial court further held that the amendments which are now being sought by respondent No.1 are consequential upon addition of the petitioner as a party and necessary for determining the real matter in controversy. The trial court further noted that there is a delay of two and half years in moving the application by respondent No. 1 and hence, the application was allowed subject to costs of Rs.3,000/-.

6. Learned counsel appearing for the petitioner has vehemently argued that the amendment application seeks to change the nature of the suit. Certain facts have been added i.e. that the identity of the property has not been correctly noted. It is further stated that the relief claimed is barred by

limitation. Evidence has already commenced and there was no occasion to move the present application.

7. As far as the contention of change of the nature of the suit is concerned, the contention is completely without merit. The original suit is for possession based on title. After the amendments, the suit remains qua possession based on title. The only addition sought is regarding a declaration of title based on a site plan which was necessary on account of the confusion created by the petitioner/respondent No.2 about the number of the property.

8. Further, the petitioner has failed to substantiate his contention about the relief of declaration being time barred. There is nothing to show when the issues were framed and when evidence started. The contentions of the petitioner are, hence, misplaced and have no merit.

9. In my opinion there is no infirmity in the impugned order which would warrant any interference of this court.

10. The petition is dismissed.

JAYANT NATH, J

AUGUST 08, 2016

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