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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) 19/2016

ASHA CHAUDHARY & ORS

..... Appellant

Through Mr. Ravi Gupta, Sr. Advocate
with Mr Swastik Singh and Ms. Mallika
Bhatia, Advocates.

versus

RAJESH & ORS

..... Respondent

Through Mr. Manish Vashist and Mr.
Sameet Vashish, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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26.07.2017

This intra-Court appeal impugns order dated 8th December, 2015 passed by the learned single Judge allowing application I.A. No.17819/2012 for amendment of the plaint.

2. The appellants herein, namely, Asha Chaudhary, Shivender Chaudhary and Priyanka Chaudhary are defendant Nos.1, 2 and 3 in CS (OS) No. 684/2004 filed by Rajesh Chaudhary, Amit Chaudhary, Arun Chaudhary and Suman Chaudhary, who are the plaintiffs.

3. The dispute pertains to inheritance of the estate left behind by late Brijender Singh, who had expired on 17th April, 2004. The contention of the first respondent, namely, Rajesh Chaudhary is that she was the only legally wedded wife of late Brijender Singh. Similar claim is made by the appellant No.1. We note that the appellant Nos.2 and 3 and respondent Nos.2 to

4 are the children of appellant No.1 and respondent No.1 respectively. As per the counsel for the parties, there is a dispute regarding lineage of appellant Nos.2 and 3 and respondent Nos.2 to 4.

4. As per the original plaint filed on 16th June, 2004, the respondents had made the following prayers:-

“It is, therefore, most respectfully prayed that his Hon’ble Court may be pleased to:

(a) pass a decree of declaration declaring that the will vide document No. 5679 Addl. Book No.3, volume no. 1378 at pages 52-54 and document No. 5677 Addl. Book No. 3, volume no. 1378 at pages 48-49 dated 12.4.04 registered with the Sub-Registrar, Delhi in favour of the defendants be declared as null and void.

(b) Further declare the Defendant No. 1 not a wife of Chaudhay Brijender Singh and the Defendants No. 2 to 3 have having no relations of any kind whatsoever with him and declare all the transactions, if any, done pursuant to GPA No. 261 as null and void.

(c) Further pass a decree to permanent injunction restraining the Defendant No. 1 from claiming wife of and Defendants No. 2 & 3 from claiming, son and daughter of late Chaudhary Brijender Singh.

(d) Pass a decree of injunction restraining the defendants and their relatives from executing the said wills and any manner whatsoever and restraining from depriving the plaintiffs from the benefits of the properties left behind by the husband of Plaintiff No. 1 and father of the Plaintiff No. 2 to 4, Ch. Brijender Singh in any manner whatsoever.

(e) Pass such other or further directions whichever may be deem fit and proper under the present circumstances of this case.”

5. In the original plaint the respondents had pleaded that they were in possession of the properties and, therefore, were not required to seek consequential relief for possession. The

paragraph relating to the court fee in the suit was framed on the pretence that the respondents were in peaceful and physical possession of the properties.

6. The appellants in the written statement have specifically disputed and challenged the claim of the respondents regarding physical and actual possession. Reference stands made to Section 34 of the Specific Relief Act to submit that the suit without consequential relief for possession would not be maintainable.

7. The respondents in the replication had simply reiterated their earlier stand with regard to the physical possession, except for stating that property No. J-68, South Extension-I, New Delhi had been encroached upon recently and a contempt petition would be filed.

8. The respondents filed an application for amendment on 19th September, 2012, to incorporate the prayer for possession. The respondents had also sought and prayed for consequential amendments in the paragraphs relating to valuation and court fees.

9. Learned single Judge in our opinion has rightly allowed the application for amendment in the factual matrix and we are not inclined to interfere with the impugned order. The consequence of disallowing the amendment would be severe and harsh. It would put the respondents into grave difficulty. The respondents would have relied on the legal advice given to them when the plaint was drafted. Even if there was lapse on

the part of the respondents in respect of the averments made in the plaint, they are required to be burdened with costs rather than rejection of the application for amendment. In fact, it is the appellants, who had raised the objection with regard to lack of possession. Subsequently; but belatedly the respondents realized their mistake and error and by praying for amendment, they have rectified the technical objection.

10. The application for amendment was filed before the trial had commenced. There are other civil suits pending between the parties relating to the estate left behind by late Brijender Singh. In the facts of the case and keeping in view the period of delay, we would only direct the respondents to pay costs of Rs.40,000/- to the appellants, which Counsel for the respondents states would be paid. Costs would be paid within a period of one month from today.

11. With the aforesaid modification, the appeal is disposed of without substantially interfering with the impugned order.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

JULY 26, 2017/NA