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

+ C.R.P. 44/2017

SAROJ @ SWEETY

..... Petitioner

Through Mr.I.J.S.Mehra, Advocate

versus

RITU KAPILA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.02.2017

CM No.6777/2017

Exemption allowed, subject to all just exceptions.

C.R.P. 44/2017 & CM No.6776/2017

1. By the present petition under section 115 of CPC the petitioner seeks to impugn the order dated 6.2.2017 by which his application filed under Order 14 Rule 1 and 5 CPC for framing of an additional issue has been dismissed.
2. The respondent has filed a suit for possession, permanent and mandatory injunction and recovery of usage and occupation charges/mesne profits. The respondent states that she is the owner of the property at Palam Colony, Near Jat Dharamshala, New Delhi purchased vide a sale deed dated 24.9.2015 from Shri Sharvan Kumar. The petitioner is in possession of the property and hence the suit.
3. One of the defences taken by the petitioner is that due to her intimacy with Shri Sharvan Kumar she had given Rs.2 lacs to him for purchase of the said plot. The said Shri Sharvan Kumar instead of purchasing the said plot in

the name of the petitioner against the said sum paid by her has fraudulently and mischievously purchased the plot in his own name in February 2007 without knowledge of the petitioner.

4. The petitioner moved the present application under Order 14 Rule 1 and 5 CPC. In the application the petitioner sought addition of an issue pertaining to Benami Transactions which reads as follows:-

“Whether the alleged transaction, i.e. sale deed dated 24.09.2015 executed by Sh.Sharvan Kumar in favour of plaintiff is a Benami transaction, without any actual sale consideration, or not? OPD”

5. The trial court dismissed the application on two grounds. Firstly, on alleged delay in moving the application and secondly on the ground that the issue sought to be framed is already covered in the issues framed.

6. I have heard learned counsel for the petitioner. Advance copy of the petition has been sent to the respondent but none is present.

7. As far as the ground of delay in moving the application is concerned, reference may be had to order 14 Rule 5 CPC which reads as follows:-

5. Power to amend and strike out, issues.- (1) The Court may at anytime before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

8. Hence, in view of the provisions of CPC, the court has power to amend the issues and frame an additional issue at any time before passing of

a decree. In the present case, I am informed that the evidence and cross-examination of respondent's witnesses has commenced. No doubt, the petitioner has approached the trial court somewhat belatedly. However, if the issue was a necessary issue the trial court should not have declined to frame the same on ground of delay. As per Order 14 Rule 1 CPC every material proposition affirmed by one party and denied by the other party shall form the subject of a distinct issue. Hence, the trial court had to frame necessary issues as per legal position.

9. Concerning the second reason as stated in the impugned order for dismissing the application, namely, that the issue sought to be framed is already covered in the issues framed, reference may be had to the issues framed by the trial court as below:

- “(i) Whether the sale deed dated 24.09.2015 in favour of the plaintiff has been executed by incompetent person by a fraud and cheating? OPD”
- (ii) Whether the plaintiff is entitled to a decree of possession in respect of the suit property, as prayed? OPP
- (iii) Whether the plaintiff is entitled to a decree for recovery of an amount of Rs.5,64,000/- plus pendent-lite and future usage and occupation charges/damages/mesne profits, as prayed if so, at what rate and for which period? OPP
- (iv) Whether the plaintiff is entitled to a decree for a sum of Rs.17,000/- per month as rental expenses and damages, expenses etc. as prayed? OPP
- (v) Whether the plaintiff is entitled to a decree of permanent injunction, as prayed? OPP
- (vi) Whether the plaintiff is entitled to a decree of mandatory injunction, as prayed? OPP
- (vii) Whether the plaintiff is entitled to a decree for damages, as prayed? OPP”

The case of the petitioner is that she provided the consideration for the property and the property has been bought by Sh.Sharvan Kumar in his name. She seeks to rely upon Section 2(9) of the Prohibition of Benami Property Transactions Act, 1988 which provides that where the property is held by a person and consideration for such property has been provided or paid by another person, the property would be a benami transaction. It is clear that this proposition stated by the petitioner and denied by the respondent cannot be said to be directly covered by any of the issues framed by the trial court.

10. Accordingly, it is clear that the impugned order suffers from material illegality. I quash the impugned order. The parties are remanded back to the trial court for fresh adjudication of the application filed by the petitioner under Order 14 Rule 1 and 5 CPC, as per law.

11. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

12. Dasti.

JAYANT NATH, J

FEBRUARY 20, 2017/n