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

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Date of decision: 10.03.2017

+ CM(M) 284/2017

RAKESH JAIN & ORS

..... Petitioner

Through Mr.S.K.Bhaduri, Ms.Kirti Parmar and
Mr.Mehul Jain, Advocates

versus

KARNAIL SINGH KLER & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.9619/2017

Exemption allowed, subject to all just exceptions.

CM(M) 284/2017 & CM No.9620/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 9.12.2016 by which an application under Order 6 Rule 17 CPC filed by the plaintiff/respondent No.1 was allowed.
2. The background facts are that respondent No.1 has filed a suit for cancellation of sale deed dated 13.6.2005 allegedly executed by petitioner No.1 and respondent No.4. A decree of declaration is also sought that the sale of property bearing No. R-115, Greater Kailash, Part-I, New Delhi by defendant No.2 (petitioner No.1) in favour of defendants No.5,6,7, namely, petitioners No.2,3 and 4 by virtue of sale deed dated 15.3.2007 be declared a nullity. Permanent injunction is also sought. The petitioners at the initial stage itself had objected to the Suit as framed stating that the suit for

declaration and permanent injunction would not lie unless the plaintiff seeks relief of possession. The said objection was taken by means of an application under Order 7 Rule 11 CPC. The suit at that time was pending before this court. This court by order dated 28.9.2015 accepted the said plea of the petitioner that once a sale deed as per the plaint has been wrongly executed, the plaintiff will have to seek possession of the suit property for defendant No.4/respondent no.4 herein. The said application of the petitioner under Order 7 Rule 11 CPC was disposed of noting that the counsel for the plaintiff/respondent No.1 has agreed to amend the plaint to seek the relief of possession of the suit property.

3. Now the present application has been filed by respondent No.1 for amendment of the plaint. The trial court has noted the objections of the petitioners and has allowed the application noting that the proposed amendments are necessary for determination of the real question in controversy and to avoid further litigation between the parties. Further, the additional relief of possession which is stated to be added is based on the same cause of action already disclosed in the plaint. It also noted that in any case the application has been moved pursuant to order dated 28.9.2015 passed by this court on the application of the petitioner under Order 7 Rule 11 CPC.

4. I have heard learned counsel for the petitioners. The basic grievance that has been urged before this court is that by the present application under Order 6 Rule 17 CPC what respondent No.1 is proposing to do is to add relief that the possession of the suit property in GK-I be given either to the plaintiff/respondent No.1 or to defendant No.4/respondent No.4.

5. Learned counsel for the petitioners submits that he has no objection

regarding the relief being added in the plaint for possession in favour of respondent No.4. He however submits that the plaintiff/respondent No.1 cannot seek relief in his favour and that this is contrary to the earlier order of this court dated 28.9.2015.

6. In my opinion, the order of this court dated 28.9.2015 cannot said to bar the relief which is now sought to be added by the respondent No.1. No doubt, the order states that the respondent No.1 ought to have prayed for relief of possession in favour of respondent No.4 as it is the stand of the plaintiff/respondent No.1 that the sale deed has been wrongly issued by the said respondent No.4. It is petitioners No.2 to 4 who have physical possession of the property. The application of the petitioner was disposed of with the following direction:-

“Counsel for the plaintiff agrees that he will accordingly amend the plaint and seek the relief of the possession of the suit property and for which time of four weeks is prayed for and is granted.”

7. There is nothing in the said order which debars the plaintiff/respondent No.1 from seeking relief in his favour. Learned counsel for the petitioner has submitted that respondent No.1/plaintiff cannot seek relief of possession for himself. In my opinion, while considering an application for amendment of the plaint the merits of the amendment which are sought to be introduced are not to be adjudicated upon at the time of considering the application for amendment. A perusal of the plaint would show that various averments have been made by the respondent No.1 regarding the Memorandum of Understanding said to have been executed with the other Directors of respondent No.4 company. He has also claimed

that the property in question could not have been sold without the consent of the plaintiff/respondent No.1, defendant No.1 and defendant No.3 but the property has been sold by defendants No.1 and 3 without consultation and prior permission of respondent No.1. There are also serious disputes between the Directors of respondent No.4.

8. The Supreme Court in *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors.*, (2009) 10 SCC 84 held as follows:-

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:-

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is *bona fide* or *mala fide*;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

9. In the light of this background, in my opinion, the additional relief sought by the respondent No.1 seeking decree of possession in his favour/in favour of respondent No.4 company is a relief borne from the facts stated in

the plaint. As rightly noted by the trial court the proposed amendment would be necessary for determination of real questions of controversy and to avoid further controversy between the parties. The relief is bona fide.

10. There is no merit in the petition. Same is dismissed.

JAYANT NATH, J

MARCH 10, 2017

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