

\$~A-39

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

+ CM(M) 355/2017

VEENA RANI

..... Petitioner

Through Mr.Gagan Chhabra, Ms.Richa Narang
and Mr.Rohit Puri, Advocates

versus

M/S AMBITIOUS CONSTRUCTIONS PVT

LTD & ORS

....Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

29.03.2017

CM No.12403/2017 (exemption)

Allowed subject to all just exceptions.

CM(M)355/2017 & CM No.12402/2017(stay)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 14.02.2017 by which an application filed by the respondent/plaintiff under Order 6 Rule 17 CPC has been allowed. The respondent No.1 has filed a suit for declaration, permanent and mandatory injunction. A decree of declaration is sought to declare the sale deed dated 21.7.2014 and other documents as null and void. A decree of permanent injunction is also sought to restrain the petitioner from creating hindrance over the peaceful physical possession of the plaintiff/respondent No.1 of the suit property. The petitioner claims title to the suit property based on the sale deed dated 21.7.2014.

2. A per the application filed by respondent No.1 under Order 6 Rule 17

an application was filed by the petitioner to ascertain the actual physical possession of the property. The Local Commissioner filed a report whereby he has stated that the property is in possession of the petitioner. Hence, as per the application it is now necessary to amend the plaint in order to seek a separate relief of possession by the respondent No.1/plaintiff. Accordingly, consequential amendments are sought in the plaint.

3. The trial court has allowed the application filed by respondent No.1 noting that in view of the report of the Local Commissioner it had become necessary to claim such relief.

4. I have heard learned counsel for the petitioner. He submits that the conduct of respondent No.1 is dishonest as he all along knew that he is not in possession of the suit property and that the petitioner is in possession of the suit property and has a valid sale deed in her favour. He submits that the conduct of respondent No.1 being mala fide the trial court ought not to have allowed the amendment application.

5. In my opinion, there are no reasons to interfere in the impugned order. Respondent No.1 has already sought declaration that the sale deed allegedly executed in favour of the petitioner be declared null and void. He has also sought an injunction to restrain the petitioner from dispossessing respondent No.1 from the suit property. Based on the report of the Local Commissioner, it is now sought to submit that the relief of possession is necessary and hence necessary amendment is sought. The amendment does not change the nature of the suit. What the petitioner is urging are actually averments on merit inasmuch as the issue of possession is a disputed question of fact and cannot be a ground, at this stage, to determine as to whether the amendment should have been allowed. The amendment is necessary for the purpose of

determining the real questions in controversy between the parties.

6. Accordingly, the present petition is without merits and is dismissed.
All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 29, 2017

n