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

+ C.R.P. 99/2017 & CM No.15550/2017 (for stay)

APG TOWER PVT LTD Petitioner

Through: Mr. Manish Bansal & Ms. Aarti Tyagi, Advs.

Versus

ALPANA GUPTA & ANR Respondents

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Deepak Vohra, Mr. Sachin Jain & Ms. Malika Bhatia, Advs.

AND

+ C.R.P. 157/2017 & CM No.25147/2017 (for stay)

RAKESH BINDAL Petitioner

Through: Mr. S.D. Singh, Mr. Rahul Kumar Singh & Mr. Jitendra Singh, Advs.

Versus

ALPANA GUPTA & ANR Respondents

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Deepak Vohra, Mr. Sachin Jain & Ms. Malika Bhatia, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.07.2017**

1. These Revision Petitions, both under Section 115 of the Code of Civil Procedure, 1908 (CPC) and arising from the same suit and by different defendants having common interest, impugn the order (dated 16th January, 2017 in Civil Suit No.1641/2016 of the Court of Additional District Judge (ADJ)-1, North District, Rohini Courts, Delhi) dismissing the separate applications filed by the petitioners / defendants under Order VII Rule 11 of the CPC for rejection of the plaint in the suit filed by the respondent No.1 in each of the petitions.

2. Notice of Civil Revision Petition No.99/2017 was issued and the Trial Court record requisitioned.
3. The respondent No.1 / plaintiff instituted the suit from which these petitions arise i) for declaration that the respondent no.1 / plaintiff is the owner of land admeasuring 12 Bighas 14 Biswas of village Alipur, Delhi on the strength of documents dated 14th October, 1998 viz. Agreement to Sell, General Power of Attorney, Will, Receipt, Affidavit, Indemnity Bond executed by the respondent/defendant no.2 Rakesh Bindal in favour of the respondent no.1 / plaintiff; ii) in the alternative, for recovery of Rs.8 lacs with interest from the respondent/defendant no.2 Rakesh Bindal; and, iii) for permanent injunction restraining the respondent/defendant no.1 APG Towers Pvt. Ltd. from creating any third party interest in the aforesaid land.
4. It was *inter alia* the case of the respondent no.1 / plaintiff i) that the respondent/defendant no.2 Rakesh Bindal had vide documents of 14th October, 1998 agreed to sell the land to the respondent no.1 / plaintiff and put the respondent no.1 / plaintiff in possession of the said land; ii) that after the judgment of the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana*** AIR 2012 SC 206, the respondent no.1 / plaintiff approached the respondent/defendant no.2 Rakesh Bindal to have the sale deed executed in favour of the respondent no.1 / plaintiff; ii) that the total sale consideration as per the documents of 14th October, 1998 was Rs.8,00,000/- and out of which Rs.2,00,000/- were paid to the respondent/defendant no.2 Rakesh Bindal at the time of execution of the documents dated 14th October, 1998 and the respondent no.1 / plaintiff at the

time of approaching the respondent/defendant no.2 Rakesh Bindal for having the sale deed executed in her favour tendered the balance consideration of Rs.6,00,000/-; iii) that the respondent/defendant no.2 Rakesh Bindal informed the respondent no.1 / plaintiff that since the respondent/defendant no.2 Rakesh Bindal had already on 14th October, 1998 also appointed an attorney to execute the sale deed, the respondent no.1 / plaintiff should approach the said attorney; iv) that the sale deed of the land was registered in favour of the respondent no.1 / plaintiff on 5th June, 2013; v) that however the respondent no.1 / plaintiff also realized that the respondent/defendant no.2 Rakesh Bindal had also executed and registered a sale deed of the same land in favour of petitioner / defendant no.1 APG Towers Pvt. Ltd. on 3rd April, 2013; vi) that petitioner / defendant no.1 APG Towers Pvt. Ltd. also applied for mutation of the land in the revenue records in their favour and which was granted resulting in 'deemed dispossession' of the respondent no.1 / plaintiff from the land; vii) that the appeal preferred by the respondent no.1/plaintiff against the order granting mutation was still pending; viii) that the petitioner / defendant no.1 APG Towers Pvt. Ltd. and respondent / defendant no.2 Rakesh Bindal applied for rejection of the plaint stating that without seeking the relief of setting aside of the sale deed executed by respondent / defendant no.2 Rakesh Bindal in favour of petitioner / defendant no.1 APG Industries Pvt. Ltd., the respondent no.1 / plaintiff was not entitled to any relief; ix) that the ancillary objections qua valuation and limitation were also taken; and, x) the said application has been dismissed by the learned ADJ.

5. I have in the circumstances, at the outset only enquired from the senior counsel for the respondent no.1 / plaintiff that the sale deed by respondent / defendant no.2 Rakesh Bindal in favour of petitioner / defendant no.1 APG Towers Pvt. Ltd. being of an earlier date than the sale deed in favour of the respondent No.1 / plaintiff, how can the respondent no.1 / plaintiff, without having the said sale deed set aside, assert any rights in the land and claim any reliefs with respect thereto.
6. The senior counsel for the respondent no.1/plaintiff after some argument, under instructions, states that the respondent no.1 / plaintiff will make appropriate application in the suit for amendment of the plaint to claim the reliefs of declaration qua the sale deed in favour of petitioner / defendant no.1 APG Towers Pvt. Ltd. and for recovery of possession and value the suit accordingly.
7. The counsels for the petitioners / defendants object.
8. It is the settled position in law (see *Wasudhir Foundation Vs. C. Lal & Sons* 45 (1991) DLT 556 and order dated 6th May, 2014 in FAO(OS) No.357/2013 titled *Anita Kumari Gupta Vs. Ved Bhushan*) that an application under Order VI Rule 17 of the CPC, even if filed after the filing of an application under Order VII Rule 11 of the CPC, has to be considered first.
9. The counsels for the petitioners/defendants state that in the present case, the application has already been decided.
10. The position would have been different if the applications of the petitioners / defendants had been allowed. In that case, it could have perhaps been urged that in appeal against the rejection of the plaint, the plea could not be taken (though amendment in appeal is also permissible).

However in the present case, the applications were dismissed and this proceeding challenging the order of dismissal is in continuation and since the plaint has not been rejected as yet, the respondent no.1/plaintiff is entitled to apply for amendment.

11. Accordingly, it is not deemed appropriate to hear these petitions.

12. The petitions are disposed of with the following directions:

- (i) The respondent no.1 / plaintiff is at liberty to apply for amendment of the plaint on or before 11th August, 2017;
- (ii) If the said application is filed, the same shall be considered by the suit Court on its own merits and it will be open to the petitioners/defendants to take all pleas in opposition thereto;
- (iii) However if the application for amendment is not filed within the time aforesaid, then the right to apply for amendment in pursuance hereto shall stand closed and these petitions shall be deemed to have been allowed and the impugned order set aside and the plaint in the suit as existing shall stand rejected.

13. The respondent no.1 / plaintiff is also burdened with costs of these petitions of Rs.1,00,000/- to each of the petitioners payable along with the application for amendment.

RAJIV SAHAI ENDLAW, J.

JULY 27, 2017

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