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

+ CM(M) 1016/2016 and CM Nos. 37047/2016, 37048/2016 &
48056/2016

USHA RANI

..... Petitioner

Through Mr. R.K. Bhardwaj and Mr. Muntazir
Mohd., Advocates.

versus

SOHAN LAL

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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18.01.2017

1. Affidavit of service has been filed of having affected service on the respondent. None is present for the respondent.
2. By the present petition filed under Article 227 of the Constitution, the petitioner seeks to challenge the order dated 02.07.2016 by which an application under Order 6 Rule 17 CPC for amendment of the plaint filed by the petitioner was dismissed. The petitioner/plaintiff has claimed to have purchased the suit property comprising one room and verandah on the ground floor and a roof over the said room on 15.04.2000 from one Sh. Raja Ram. Thereafter, the respondent-Sh. Sohan Lal is said to have encroached/trespassed into the verandah and kitchen on the ground floor of the property and on the roof over the ground floor on 05.04.2001.
3. The petitioner filed the suit for possession. In the written statement,

the respondent averred that Sh. Raja Ram was not the owner of the suit property and the actual owners are Mohd. Ahmed and Mohd. Yusuf sons of Begum Jan. On 14.10.2009, the petitioner claims to have purchased the ground floor of the property by means of a registered sale deed executed by Sh. Shahid Ahmed Ferozie son of Mohd. Yusuf and the actual owner of the property. On 14.02.2014, the suit of the petitioner was dismissed by the trial court. An appeal was preferred. The appellate court, in the interest of justice, remanded the matter back to the trial court to give an opportunity to the petitioner to prove the sale deed dated 14.10.2009 in accordance with law.

4. Now on remand, the petitioner has filed the present application under Order 6 Rule 17 CPC. By this application, he seeks to add an averment in the plaint regarding the sale deed dated 14.10.2009 and the fact that it has been executed by Sh. Shahid Ahmed Firozie who is the actual owner of the property. The petitioner also wants to add an averment that the earlier person-Sh. Raja Ram from whom the petitioner originally bought the property had played a fraud on the petitioner.

5. The trial court by the impugned order held that there was a specific direction given by the appellate court whereby an opportunity was to be given to the petitioner to prove the sale deed in accordance with law. The trial court noted that it does not have the power to traverse beyond the directions given by the appellate court. It noted that even when the petitioner got the sale deed executed on 14.10.2009, no application for amendment of pleadings was made though there is a consistent attempt of the petitioner to have the sale deed in question read in evidence. Hence, the application was dismissed.

6. The petitioner has filed the present suit for possession. The opening

sentence in the plaint is that the petitioner is the owner of the suit property. The subsequent events which are sought to be brought on record, namely, about the sale deed dated 14.10.2009 are only in furtherance of the claim of the petitioner that he is the owner of the property. The proposed amendments cannot say to change the nature of the suit. They are also not beyond the scope of the order of the appellate court which remanded the case back to give an opportunity to the petitioner to prove the said sale deed dated 14.10.2009. The amendment would also be necessary for complete adjudication of the disputes between the parties.

7. The conclusion of the trial court that permitting the amendment would be beyond the directions of the appellate court was a misplaced conclusion. The petitioner's application is allowed. The petitioner may amend the plaint as per the application for amendment filed by the petitioner.

8. All pending applications also stand disposed off.

9. Dasti.

JAYANT NATH, J

JANUARY 18, 2017/rb