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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1161/2017, CM No.37843/2017 (for stay) and CM
No.37845/2017 (for condonation 35 days delay).
ABDUL SATTAR Petitioner

Through: Mr. S. H. Nizami, Adv.

versus

THE SECRETARY GOVT OF INDIA & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.10.2017**

CM No.37844/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

**CM(M) 1161/2017, CM No.37843/2017 (for stay) and CM
No.37845/2017 (for condonation 35 days delay).**

3. This petition, under Article 227 of the Constitution of India, impugns the order (dated 7th April, 2017 in CS No.83134/2016 of the Court of ASCJ-cum-HSCC-cum-GJ (South) Saket Courts, New Delhi) of dismissal of the application of the petitioner / plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint.
4. The impugned order dismisses the application, reasoning that the amendment was in withdrawal of an admission made in the plaint as originally filed.
5. Notwithstanding so, the counsel for the petitioner / plaintiff along with this petition has not filed a copy of the plaint. On asking, a copy of the plaint is handed over and a perusal whereof shows the suit, from which this petition arises, to have been filed by the petitioner / plaintiff for (i)

declaration that the petitioner / plaintiff and the pro forma respondents / defendants no.6 to 14, being the heirs of one Allah Diya, are the owners of land *ad measuring 5 bighas 7 biswas* in Khasra No.515, 516 and 517 at Village Indraprastha, Delhi and that neither the respondents / defendants no. 1 to 4 being Government of India, National Capital Territory (NCT) of Delhi have any right thereto nor the respondent / defendant no.5 Rameshwari Devi and the respondent / defendant no.15 Vavasi Teligens Pvt. Ltd. have any rights thereto; (ii) mandatory injunction directing the respondents / defendants no.1 to 4 to delete the names of the respondents / defendants no.5 & 15 from the Revenue Record with respect to the said land; and, (iii) permanent injunction restraining the respondents / defendants from creating third party interest in the said land affecting the rights of the petitioner / plaintiff and respondents / defendants no.6 to 14 with respect to the said land.

6. In para 12 of the plaint, it was *inter alia* pleaded that the respondents / defendants no.5 & 15 are liable to be restrained from creating any third party interest like parting with possession or execution of any documents in favour of any other party with respect to the said land on the basis of documents in favour of the respondents / defendants no.5 and 15.

7. The petitioner / plaintiff, by way of amendment, sought to delete the part of para 12 aforesaid where the respondents / defendants no.5 and 15 were claimed to be liable to be restrained from parting with possession of the land.

8. The impugned order has dismissed the application for amendment of the plaint reasoning that the petitioner / plaintiff, by pleading so in para 12

of the plaint, had admitted the possession of the respondents / defendants no.5 & 15 of the land and the said pleading could not be said to be a *bona fide* mistake and that important rights had accrued in favour of the respondents / defendants no.5 & 15 which could not be taken away by allowing the amendment. It was further reasoned that the petitioner / plaintiff in his lifetime never claimed such mistake and it was his legal representatives who were pleading so.

9. Having not found any averment of the plaint of the petitioner / plaintiff having claimed possession of the land of his own, I have enquired so from the counsel for the petitioner / plaintiff.

10. The petitioner / plaintiff though unable to show any such averments, has referred to para 1 of the plaint where it is pleaded that Allah Diya aforesaid was the owner in possession of the larger land of which the aforesaid land forms a part. However, the petitioner / plaintiff in the plaint has also pleaded that the said land was never acquired by the Government of India and the entries if any to such effect are fictitious and the Estate Officer of the Government of NCT of Delhi has no legal right to initiate any proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) with respect to the said land. In the light of the said pleadings, the plea of the ancestor of the petitioner / plaintiff namely Allah Diya, who the counsel for the petitioner / plaintiff states died long ago, being the owner in possession of the larger land cannot be construed as the plea of the petitioner / plaintiff, at the time of institution of suit, being in possession of the land.

11. I have also enquired from the counsel for the petitioner / plaintiff,

whether the respondents / defendants no.5 & 15 in their written statement took a plea of being in possession of the land and what was the replication filed by the petitioner / plaintiff thereto.

12. Again, neither the written statement of the respondents / defendants no.5 & 15 nor of the other respondents / defendants has been filed nor any replication thereof has been filed. The counsel for the petitioner / plaintiff however states that the land is open land till date and has not been built up. A copy of the written statement of the respondent / defendant no.5 handed over in the Court however is found to be containing a pleading that the predecessor-in-interest of the respondent / defendant no.5 was in possession of the land since 12th April, 1996. From a copy of the replication thereto handed over in the Court, it transpires that the said plea in the written statement was responded to by stating that the plea of the respondent / defendant no.5 in the alternative of adverse possession, was untenable in lieu of the claim of the respondent / defendant no.5 of lawful title to the property. There is no denial of possession of the respondent / defendant no.5.

13. In this view of the matter, no error is found in the impugned order.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 24, 2017

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