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

+ **CM(M) 1127/2017**

MOHD JASEEM SHEIKH

..... Petitioner

Through: **Mr. Virag Kumar Agarwal & Mr.
Vibhor Agarwal, Advs.**

Versus

UMAD PARVEEN

..... Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.10.2017

CM No.36748-49/2017 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 1127/2017 & CM No.36747/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 1st September, 2017 in CS No.59778/2016 of the Court of JSCC/ASCJ/GJ (North West), Rohini Courts, Delhi] allowing the application of the respondent / plaintiff for amendment of the plaint.
4. The contention of the counsel for the petitioner / defendant is that the pleas by way of amendment which have been allowed are not relevant for the adjudication of the matter in controversy and the learned Additional Senior Civil Judge (ASCJ), without considering the said aspect, has allowed the amendment.
5. The aforesaid contention has been considered.

6. The respondent / plaintiff has instituted the suit from which this petition arises, against the petitioner / defendant as well as four others (who have not been impleaded as parties to this petition), for permanent injunction to restrain the defendants in the suit from dispossessing the respondent / plaintiff from an immovable property and from dealing with the said immovable property, pleading i) that the husband of the respondent / plaintiff was intending to purchase the property and being a less educated person, took the help of the defendants no.1&2, who are the brothers of the respondent / plaintiff, in this regard; ii) that the husband of the respondent / plaintiff also handed over the purchase consideration to the defendants no.1&2; iii) that on purchase of the property, the respondent / plaintiff started residing on the ground floor of the same and the other floors are in occupation of the tenants of the respondent / plaintiff; and, iv) that the respondent / plaintiff came to know that the defendants have purchased the said property in their own name instead of in the name of the husband of the respondent / plaintiff, by playing fraud and deceit.

7. The counsel for the petitioner / defendant on enquiry states that the petitioner / defendant claims to be the owner of the property and claims to have allowed the respondent / plaintiff, as a sister, to reside in the property.

8. The respondent / plaintiff, by way of amendment, besides the relief of injunction claimed in the suit as originally filed, is claiming the relief of cancellation / declaration of the documents in favour of the petitioner / defendant as null and void and not binding upon the respondent / plaintiff.

9. It thus cannot be said that the amendment sought were not relevant inasmuch as in a suit for injunction simpliciter, as per the dicta of the Supreme Court in *Anathula Sudhakar Vs. P. Buchi Reddy* (2008) 4 SCC 594 an enquiry of title, without the relief qua title being specifically claimed, could not have been made.

10. The counsel for the petitioner / defendant then states that the respondent / plaintiff is seeking declaration qua the documents in favour of the petitioner / defendant without seeking any title to the property in herself.

11. The same are not pleas for denying the amendment inasmuch as in terms of order dated 31st August, 2017 in CM(M) No.18/2012 titled *Valvoline Cummins Ltd. Vs. Guru Mehar Construction Pvt. Ltd.* and *Phonographic Performance Ltd. Vs. HT Media Ltd.* 2017 SCC OnLine Del. 7069, *Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd.* (2008) 17 SCC 671 and *Rajesh Kumar Aggarwal Vs. K.K. Modi* AIR 2006 SC 1647 the merits of the amendment cannot be gone into at the stage of considering the application for amendment. It will be open to the petitioner / defendant to, in the written statement to the amended plaint, take all pleas available to him.

12. The counsel for the petitioner / defendant at this stage states that the learned ASCJ, in the impugned order, has given final findings qua the relief claimed by way of amendment by the respondent / plaintiff being within limitation.

13. The findings with respect to limitation, at the stage of consideration of the application for amendment, can never be final and are only for the purpose of gauging whether the relief sought to be added by way of amendment is so palpably barred by time so that without even allowing the amendment, the amendment can be refused on the ground of the claim sought to be set up by way of amendment being admittedly or unambiguously barred by limitation.

14. With the said observations, there is no need for issuing any clarifications.

15. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

OCTOBER 13, 2017

‘gsr’

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