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

Decided on: 31st January, 2018

+ CM(M) 125/2018 and CM 3818-3819/2018

SURENDER KUMAR Petitioner
Through: Mr. Rajeev Sharma, Advocate

versus

DELHI DEVELOPMENT AUTHORITY
& ORS Respondents
Through: Mr. Sanjay Singh, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted civil suit (now registered as suit no.12617/2016) on 10.11.2006 initially against Delhi Development Authority (DDA), the first respondent herein, seeking reliefs in the nature of declaration to the effect that he is the sole owner of the subject property and for mandatory injunction against DDA for mutation of the subject property in his name. It is stated that second to fourth respondents moved an application on which they were impleaded in the case which led to the plaint being amended wherein the petitioner (as the plaintiff) also sought the relief of prohibitory injunction against them from entering into the subject property or raising any construction therein or from dispossessing or interfering in his peaceful possession or enjoyment.

2. It is the case of the petitioner that upon facts coming to light that the property had been belatedly transferred by the said respondents in favour of the fifth respondent, she was also impleaded as additional defendant.

3. The impugned order dated 15.11.2017 would show that the defendants other than DDA are suffering the proceedings *ex parte*.

4. The plaintiff claims to have moved an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) on 13.08.2012 on the averments that on 19.12.2008 during the pendency of the suit he had been forcibly dispossessed by the private parties shown in the array as defendants. In this light, he also sought to add another prayer to the suit, *i.e.* grant of the decree of possession. The said application moved on 13.08.2012 did not see light of the day or any effective proceedings. The petitioner moved another application on identical grounds, and with similar prayer, on 14.12.2016 which has been dismissed by the trial Court by order dated 15.11.2017, *inter alia*, disbelieving the claim of facts about previous application having been lost and not being traced on record holding the move for amendment belated and consequently impermissible.

5. It is the aforesaid order which is under challenge by the present petition.

6. The first respondent/DDA has appeared on advance notice through counsel. The other respondents, as noted above, are suffering the proceedings before the trial court *ex parte*.

7. Having heard the learned counsel for the petitioner and the counsel for the DDA, this court is of the opinion that the prayer for amendment ought to be allowed. It may be that the case is of 2006 vintage. It also may be that the petitioner is guilty of neglect on account of not prosecuting the matter diligently. The fact remains that the allegations of forcible dispossession on 19.12.2008 during the pendency of the suit finds resonance in the proceedings arising out of CM (M) 1128/2010 which is pending in this court. The burden of proving that the petitioner was dispossessed on 19.12.2008, that too illegally and forcibly, will remain on the shoulders of the petitioner (the plaintiff) and he cannot succeed without discharging the said burden. The fact remains that he came to the civil court in 2006 with assertion that he was in possession which merited being protected. The claim that he was dispossessed during the pendency of the case will have to be tested at the trial. He ought not be denied the relief of amendment in as much as that would only lead to multiplicity of proceedings.

8. In the given sequence of events, it is not fair to disbelieve that he had moved an application for such amendment in 2012 which would be around the same time as he was prosecuting the matter relating to forcible dispossession. The impugned order itself shows that the file had travelled to this court in the context of CM (M) 1128/2010 referred to above which statedly continues to be pending. If there has been some mis-management of the record, it is not proper to deny the appropriate relief to the petitioner. Given the neglect, however, such permission to amend cannot be without appropriate

conditions.

9. In view of the above, the petition is allowed. The prayer for amendment of the plaint is granted subject to costs of Rs.20,000/- to be deposited with District Legal Services Authority before the next date of hearing fixed before the trial court and subject to fresh notices being served on the amended plaint on the parties which have so far been suffering the proceedings *ex parte*.

10. The petition and the applications filed therewith stand disposed of in above terms.

JANUARY 31, 2018

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R.K.GAUBA, J.



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