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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd January, 2018

+ C.M. (M) 92/2018 and CM APPL.2572-2573/2018

SMT. RAVNEET KAUR Petitioner

Through: Mr. Shailendra Bhardwaj, Advocate
with Mrs. Aroma S. Bhardwaj, Adv.

versus

SHRI PRITHPAL SINGH DHINGRA Respondent

Through: Mr. Rajat Wadhwa, Advocate with
Mr. Ravitnay Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition assails the order dated 21.08.2017 of the trial court declining liberty to amend the pleadings in the civil suit.
2. The petitioner is the defendant in the civil suit (Civ DJ-613347/2016) which was instituted on 20.08.2016 by the respondent herein seeking reliefs in the nature of decree of eviction, possession, recovery of damages and permanent injunction against her in respect of premises described as front side of the second floor of property bearing No.E-7, Rajouri Garden, New Delhi-110027 (the suit property). It is an admitted case of both the parties that the petitioner (the defendant) is the daughter-in-law of the respondent (plaintiff), she being the wife of his son Guneet Dhingra. Indisputably, she is living

in the said premises with her two minor daughters. It appears from the submissions that the dispute arose on account of matrimonial discord between the petitioner and her husband. It further appears that the suit was filed on the basis of claim that the defendant has been rendered an unauthorized occupant, her permissive use and occupation of the premises having come to an end. The parties are locked in other litigation including proceedings arising out of a petition filed by the defendant under the provisions of Protection of Women from Domestic Violence Act, 2005.

3. The suit has been filed by the plaintiff claiming himself to be the sole, absolute and exclusive owner of the property on the strength of a Sale Deed dated 15.12.2004 duly registered whereby it was acquired.

4. The order under challenge was passed on 21.08.2017 by the Additional District Judge (ADJ), whereby the application of the defendant under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) seeking liberty to amend the written statement was declined. The trial court referred to the ruling of the Supreme Court in *M/s. Revajeetu Builders & Developers vs. M/s. Narayanaswamy and Sons & Ors.*, AIR 2009 SC (Supp) 2897, to observe that the proposed amendments had the effect of introducing a new case in the written statement which would prejudice the plaintiff, depriving him of the benefit of admissions made in the original pleadings which was impermissible.

5. The amendments proposed by the defendant relate to the claim of the plaintiff about his title to the suit property. A perusal of the

copy of the written statement filed reveals that the defendant had conceded that the property bearing No.D-1041, First Floor, New Friends Colony, New Delhi-110065 which was part of the property built on the plot of land had been allotted originally in the name of Sardar Kesar Singh Dhingra, father of the plaintiff, had fallen to his share, after the death of the said original owner, in the wake of No-objection given by other legal heir Surender Singh Dhingra. It was the defendant's case in the written statement that the said property had been sold by the plaintiff, for consideration, on 15.12.2014 and, thereafter, the property in suit was purchased. It does appear that in the said written statement it was also mentioned that Sh. S. Kesar Singh Dhingra had purchased the said plot of land in New Friends Colony and raised construction thereupon out of the joint family fund and hence from the proceeds of ancestral property and after his death, the plaintiff and his brother Surender Singh Dhingra having inherited the said property and other family business.

6. By way of amendment of the written statement, as proposed in the application under Order VI Rule 17 CPC, the defendant, however, sought to narrate the history of the estate of the family from the time of its migration to India from areas now in Pakistan, referring in that context to the existence of a Hindu Undivided Family (HUF) and of the plaintiff's father having set up business here in Delhi, the plaintiff being a co-parcener in the HUF and a partner in the business. She now proposes to state that the property at K-12, Kirti Nagar, New Delhi and the property in New Friends Colony were purchased from

the inherited estate and income of joint family business in the name of plaintiff's father, he acting as head/*karta* of HUF.

7. The learned ADJ has rejected the proposed amendments on the grounds that these facts would bring in a new case and have the effect of taking away the admission of the title of the plaintiff in the subject property, *inter alia*, on the basis of no objection certificate given by his brother after the death of their father.

8. In the considered view of this court, the opinion expressed by the ADJ in the impugned order is based on correct appreciation of the facts and law. As pointed out by the counsel for the plaintiff the application for amendment to bring a new twist to the tale has come in the wake of application under Order XII Rule 6 CPC of the plaintiff seeking an order on admissions. The prayer for amendment has been rightly rejected with reference to the law declared in *M/s. Revajeetu Builders & Developers* (supra).

9. The petition is dismissed with costs of Rs.20,000/- to be deposited with Delhi High Court Legal Services Committee within two weeks.

10. The pending applications also stand disposed of.

R.K.GAUBA, J.

JANUARY 22, 2018

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