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

*Decided on: 17<sup>th</sup> January, 2018*

+ CM(M) 122/2016 and CM 4540/2016

**SAIGAL HOLDINGS (P) LTD & ANR ..... PETITIONERS**

Through: Ms. Malavika Rajkotia and Mr.  
Ravi Awasthi, Advocates

versus

**ASA NAND KHURANA & ORS ..... RESPONDENTS**

Through: Mr. K.R. Gupta and Mr. Nitin  
Gupta, Adv. for R-1

Mr. Anil Panwar, CGSC with Mr.  
Abhimanyu Chauhan and Mr. Pulkit Bajaj,  
Advocates for R-2

Mr. T.S. Ahuja and Mr. Varun Ahuja,  
Advocates for R-3 & 4

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The petition at hand has been preferred seeking to assail the order dated 02.12.2015 whereby the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), moved by the first respondent who is the plaintiff of the civil suit (CS no.247/2014) was allowed, the prime exception taken in the present petition being that such amendments were impermissible, the move therefor having come after the trial had commenced, the amended pleadings having the effect of expanding or altering the scope of litigation. It may be

mentioned here that the petitioners are sixth and fifth defendants respectively before the trial court.

2. The submissions made at the hearing and the copies of the pleadings and of the impugned order submitted conjointly show that the dispute relates to property described as G-52, Nizamuddin West, Delhi. Indisputably, Mr. Tirath Dass Khurana, father of the first respondent (plaintiff) was the original owner of the suit property, it statedly having been allotted to him on 26.06.1982. The plaintiff claims his right, title and interest in the suit property on the basis of bequest by Will executed by the erstwhile owner on 16.10.1982, the latter having died on 30.10.1985.

3. It was the case of the plaintiff, as originally presented, that since he is a non-resident Indian, residing in London and was suffering from certain health issues, he had appointed the third respondent as his attorney for the purposes only to resolve the legal matters relating to its mutation – presumably on the basis of the Will left behind by his father. Reference has been made in the plaint to several communications sent but with no response and to a litigation which had been initiated by one Smt. C.K. Khurana in 1992 on the basis of a document purporting to be the Will of the erstwhile owner which, according to the plaintiff, was a false and fabricated document. The suit of Smt. C.K. Khurana is stated to have been dismissed on 30.01.1996.

4. The plaintiff pleaded that it was by letter dated 04.02.2008 of the second respondent (Land & Development office), the land owning agency of the Government of India, that the property had been

mutated in favour of the third respondent on the basis of a registered General Power of Attorney dated 08.04.1993 and later in favour of the fifth respondent and the second petitioner on the basis of another General Power of Attorney dated 15.10.1996 and two agreements to sell, one dated 08.04.1993 and the other dated 15.10.1996 and further that it had been mutated in the name of the first petitioner through its director, the fifth respondent, on the basis of application dated 18.11.1999, it being converted into freehold on 28.12.2001 and in the wake of such conversion, a conveyance deed having been executed in favour of the first petitioner.

5. Broadly indicating his case to the effect that he had not executed any document other than General Power of Attorney dated 10.03.1991 in favour of the third respondent, the plaintiff prayed by the said civil suit for reliefs in the nature of declaration that the conveyance deed dated 18.12.2001 was illegal, null and void, with mandatory injunction for deletion of the name of the said defendants from the record / file of the property in question and further for its mutation in his name besides for a decree of permanent injunction restraining the defendants from creating any third party interest in the subject property.

6. It may be mentioned here that the petitioners and the fifth respondent herein filed a joint written statement contesting the suit, *inter alia*, pleading that the plaintiff had executed not only a general power of attorney in favour of the third respondent but also an agreement to sell and a Will in favour of the first petitioner in respect of the subject property on 08.04.1993. It is their case that the interest

in the property was eventually transferred in favour of the fourth respondent and further that she had executed an agreement to sell in favour of the first petitioner on 15.10.1996, transferring the title and interest in the subject property for consideration, also executing at that time the documents in the nature of general power of attorney, Will and affidavit besides an indemnity bond. The petitioners claim to be in possession of the suit property since 1996 and state that the plaintiff has not been in possession since 08.04.1993. It may be added that the third and fourth respondents also seem to be confirming the case of the plaintiff by their pleadings.

7. The suit undoubtedly had entered trial when the application for leave to amend was moved. It may be mentioned here that earlier the petitioners had moved an application under Order VII Rule 11 CPC whereby they had sought rejection of the plaint on various grounds also asserting that the plaint having been presented without seeking relief in the nature of recovery of possession could not be maintained. The said application under Order VII Rule 11 CPC, however, was rejected, the said order having been challenged unsuccessfully before this court and also before the Supreme Court.

8. The application for amendment of the plaint was filed primarily to insert new paragraph to state that the general power of attorney and the agreements and the other documents referred to above have been fraudulently manufactured by the contesting defendants in conspiracy and collusion with each other. The plaintiff also sought to add an additional relief of decree of possession of the subject property stating

the valuation of such relief to be at Rs.3 Crores, which he states is the market value, paying the *ad valorem* court fees thereupon.

9. The application was contested on the grounds indicated earlier. The learned trial judge has allowed the application by the impugned order. Reliance is placed by the petitioners on *Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and Ors.*, (2007) 14 SCC 120; *Board of Directors, H.P.T.C. and Anr. Vs. K.C.Rahi*, (2008) 11 SCC 502; *Parkash Narain Mathur Vs. Shanti Parshad Jain and Ors.*, 148 (2008) DLT 542; *Vidyabai and Ors. Vs. Padmalatha and Anr.*, (2009) 2 SCC 409; and *J. Samuel and Ors. Vs. Gattu Mahesh and Ors.*, (2012) 2 SCC 300 to argue that the learned trial judge has fallen into error by allowing the amendments.

10. Having heard the learned counsel on both sides and having gone through the record, this court finds no merit in the contentions urged. The proviso to Rule 17 of Order VI CPC shows that the restriction against amendment after commencement of trial is not unexceptional rule.

11. Without doubt, the application for amendment was moved after the trial had commenced. But then, it has to be borne in mind that the first respondent (plaintiff) is a non-resident Indian, in advanced years of his life. He has been pursuing and prosecuting his interest from abroad dependent on his attorney and an advocate engaged by his attorney in India. The history of this pursuit, as noted above, itself shows that the plaintiff had to first face a litigation initiated by one of the close relatives laying a claim over the property setting up another Will.

12. The non-inclusion of the prayer for relief of recovery of possession in the facts and circumstances comes out more on account of lapse of the counsel engaged by the plaintiff who was wholly dependent on his services.

13. Pertinent to add here that it has been one of the contentions of the petitioners that the suit as framed was defective since the plaintiff had not sought all the reliefs arising out of the same cause of action. Noticeably, while taking the said preliminary objection, the petitioners kept the plea as vague as possible, not spelling out the additional or consequent relief that could and should have been claimed in the first place. It does appear that the petitioners may have the occasion to raise questions about limitation vis-à-vis the prayer for the relief of possession. But then, in the given facts and circumstances, such questions would be mixed questions of facts and law which cannot be conclusively decided at this stage.

14. The litigation is yet to come to a logical conclusion. Nothing stops the first respondent / plaintiff from bringing a fresh suit and also seek the relief of recovery of possession. It may be that in answer to the said suit, the petitioners might be entitled to set up the same defences as have been raised in the present proceedings. But the fact remains that denial of the opportunity to amend, particularly so as to meet the preliminary objection raised by the petitioners themselves, is likely to lead to multiplicity of proceedings which must be avoided.

15. The permission to amend the plaint does not mean the issue of limitation is to be ignored. Further, the valuation put to the relief may be open to scrutiny, if challenged. The petitioners would be within

their rights to raise such pleas in the written statement to be filed in answer to the amended plaint and to press for issues to be framed in such context.

16. The learned Additional District Judge has exercised the judicial discretion vested in her and in the given facts and circumstances this court finds no reason for interference.

17. The petition and the application filed therewith are dismissed.

**JANUARY 17, 2018/yg**

**R.K.GAUBA, J.**

