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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 17th April, 2018

+ CM (M) 1096/2016 and CM APPL.Nos.40152/2016, 6494/2018
& CM APPL.14878/2018

VIJAY KUMAR GUPTA (SINCE DECEASED) THR. LRS.

..... Petitioners

Through: Mr. Manoj Sharma, Advocate
with Mr. Kapil Kaushik,
Advocate

versus

PROMILA BHAGAT

..... Respondent

Through: Mr. M.C. Dhingra, Adv. with
Mr. Gaurav Dhingra, Adv. &
Mr. Piyush Kant Roy, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is aggrieved by the order dated 10.06.2016 passed by the additional district judge (ADJ) on the file of the civil suit (CS No.429/12/87) whereby the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) of the respondent – plaintiff of the case – for amendment of the plaint was allowed, rejecting the objections of the petitioners – defendants in the suit.

2. The history of the dispute which is the subject matter of the *lis* in which the impugned order was passed is long and chequered, dating back to 1966. To put it succinctly, it needs to be noted here that the dispute concerns an immoveable property bearing Nos.6/6, South Patel Nagar, New Delhi. Munni Lal Gupta, grandfather of the defendants had filed civil suit for specific performance, bearing suit No.359/1966, against Smt. Chanderkanta Sharma, mother of the plaintiff, who concededly had entered into an agreement to sell dated 19.03.1958, followed by supplementary agreement dated 28.08.1959 but had refused to follow it up by formal transfer. The suit for specific performance was decreed by the civil court on 07.08.1967 whereafter sale deed dated 12.11.1973 was executed in favour of Munni Lal Gupta under directions of the court.

3. The suit from which the present petition arises was instituted in 1987 with the prayer for declaration that the judgment and decree dated 07.08.1967 in the former suit was null and void. This suit was disposed of by *ex parte* decree granted in favour of the plaintiff on 20.09.1995. The plaintiff filed another suit (Suit No.11/2003) – hereinafter referred to as the “*subsequent suit*” - in 1997 seeking reliefs in the nature of declaration, possession and recovery of user charges, besides injunction primarily on the basis of *ex parte* judgment dated 20.09.1995 in the present suit. On the other hand, father of the defendant moved an application under Order IX Rule 13 CPC, which was allowed by the court by order dated 07.11.2002 thereby setting aside the *ex parte* judgment and decree dated 20.09.1995. The

subsequent suit, in the wake of revival of the proceedings in the present suit came to be dismissed by judgment dated 04.08.2003. The order dated 07.11.2002 whereby the application under Order IX Rule 13 CPC had been allowed reopening the trial of the present suit was challenged by CRP No.230/2003 before this court, it having been dismissed by order dated 15.11.2006. The plaintiff of the case moved the Supreme Court by SLP (Civil) No.21840/2007, which was dismissed by order dated 13.09.2010.

4. Pertinent to note here that while dismissing the aforesaid SLP, the Supreme Court also noted that the matter had been pending *“for the last 47 years”* and in that light directed the trial court *“to make an endeavour to dispose of the suit filed by the petitioner within a period of one year from the date of receipt/production of copy of this order.”* The parties, however, were also directed not to alienate the property to any person in any manner whatsoever till the disposal of the suit.

5. The petitioner’s father who had in the meantime been impleaded as the legal heir of original defendant Munni Lal Gupta died on 03.12.2012 and on the application moved to that effect, the petitioners stood substituted in his place by order dated 03.12.2012.

6. The suit which was instituted in 1987 prayed for the following reliefs:-

“a. A decree passed in favour of the plaintiff and against the defendant declaring that the judgment and decree dated 7.8.1967 in suit No.359 of 1966 passed by the court of Sh. M.K.Bansal sub Judge-I Class, Delhi under title “Muni Lal

Gupta vs. Chanderkanta Sharma” it is nullity at law and was passed by fraud upon the court and the same be set aside; being a decree against the dead person.

b. An appropriate decree/order be passed nullifying and declaring as redundant the effect of the impugned decree dated 7.8.1967 challenged vide the instant suit and the effect and operation of the sale deed dated 12.11.1973 executed ex parte and in the absence of the vendor before the sub registrar of Assurances. Pertaining to the subject matter of the suit i.e. 6/6, South Patel Nagar, New Delhi.

c. Such other and further relief may also be granted to the plaintiffs as this learned court may deem appropriate under the circumstances;

d. Costs of the suit be also awarded to the plaintiff.”

7. The defendants while contesting the suit had, *inter alia*, taken the objection in the written statement to the effect that the suit was barred by Section 34 of the Specific Relief Act, 1963 since it did not pray for the relief of recovery of possession. The suit had been put to trial on the basis of issues framed on 16.03.1992. No formal issue on the basis of such objection as aforesaid was framed at that stage. When the *ex parte* judgment and decree dated 20.09.1995 was set aside on the application under Order IX Rule 13 CPC by order dated 07.11.2002, upon the objection being pressed in the wake of dismissal of the subsequent suit on 04.08.2003, the trial court, by order passed on the same date, *i.e.*, 04.08.2003, framed two additional issues, one on the question of limitation and the other respecting the bar under Section 34 of the Specific Relief Act, 1963 in view of the fact that there was no prayer for consequential relief of possession. The said issues were treated as preliminary issues and the case was adjourned

for arguments. The matter remained pending, unaddressed, till the SLP was dismissed by the Supreme Court by order dated 13.09.2010.

8. The copy of the record of proceedings of several dates of hearing fixed in the matter for aforementioned purposes have been filed with the petition and the perusal thereof reveals that the plaintiff of the case made all endeavour to drag feet even after clear directions of the Supreme Court for endeavour to be made for the suit to be disposed of within a period of one year of 13.09.2010. To illustrate this, it may be noted here that on 18.01.2012 the counsel for the plaintiff sought adjournment as she wanted to inspect the record. On 11.11.2013, the plaintiff had moved an application under Section 151 CPC for record to be summoned from the record room. On 28.03.2014 adjournment was sought by formal application of the plaintiff who was present in person. On 05.09.2014, the counsel for the plaintiff was statedly unable to come due to eye treatment in Chennai. On 13.11.2014, the counsel sought adjournment for the reason he could not prepare the arguments. On 19.01.2015, plaintiff sought adjournment for the reason her counsel had gone to Calcutta. On 24.02.2015, the counsel was undergoing surgery and, therefore, the matter had to be adjourned. On 21.04.2015, request was made for adjournment for the reason the counsel could not prepare since the case was "*old one*". The arguments were not advanced and the trial Judge by order dated 04.06.2015 called for brief synopsis. The plaintiff sought further time for compliance on 16.07.2015. Finally, on 18.09.2015 arguments were addressed on the preliminary issues and

the court adjourned the case for order to be pronounced on 03.10.2015.

9. On 03.10.2015, when the order on the preliminary issue of maintainability was to be pronounced, the application for amendment under Order VI Rule 17 CPC, leading to the impugned order being passed, was moved. The application was resisted by the defendants (petitioners) on the ground that it had been moved highly belatedly and to fill up lacunae. The Trial Judge, by order dated 10.06.2016, however, allowed the prayer observing that the delay caused could be compensated and, thus, imposed costs of Rs.5,000/-. It is the said order which is under challenge the propriety, correctness and legality of which is under challenge.

10. The counsel for the plaintiff (respondent) while contesting the petition argued that the provision of law contained in Order VI Rule 17 CPC gives a right to the party to the litigation to amend the pleadings. He submitted that the court must bear in mind that the provision envisages amendment of the pleadings “*at any stage of the proceedings*” and on the basis of such submission, he argued that the trial Judge has exercised judicial discretion in allowing the amendment and, therefore, it will not be proper for this court to interfere.

11. It is trite that the jurisdiction to allow a party to the civil suit to alter or amend the pleadings can be exercised by the court “*at any stage of the proceedings*”. But then, it is not correct to treat such jurisdiction as unrestricted or unguided. It is a jurisdiction which vests

in the court judicial discretion which has to be exercised with great responsibility. The amendment of the pleadings cannot be granted for the asking. The party in question must make out a proper case for such permission to be accorded, *inter alia*, by showing that the amendments which are proposed to the pleadings are “*necessary*” for the purpose of determining the real questions in controversy between the parties. The provision of Rule 17 of Order VI CPC further requires that in case the trial has commenced, the application for amendment shall not ordinarily be allowed and that to make out a case for such permission to amend to be granted, the applicant must show to the satisfaction of the court that it could not have raised the matter at an earlier stage “*in spite of due diligence*”.

12. As noted above, issues in the case had been framed on 16.03.1992 whereafter the case had entered the stage of trial. The preliminary issues, particularly on the objection with reference to Section 34 of the Specific Relief Act, 1963, were framed on 04.08.2003. Even if it is to be construed that earlier the plaintiff of the case had no necessity of bringing any amendment to the plaint, particularly to add to the prayer clauses (to meet the preliminary objections), for the reason that such preliminary objection had not been given any serious consideration by the court – no issues having been framed in such context – the plaintiff stood informed and cautioned on 04.08.2003 about possible defect or deficiency in the plaint. It may, however, be granted in her favour that her revision petition against the order dated 07.11.2002 on the application under

Order IX Rule 13 CPC was still pending at that stage before this court. But then, the dismissal of the revision petition by this court on 15.11.2006 and dismissal of the SLP by the Supreme Court on 13.09.2010 would have awakened her to reality that the preliminary objections still required to be addressed by the court in terms of preliminary issues that had been added on 04.08.2003. No amendment application was proposed even in the wake of the dismissal of the SLP from 13.09.2010. The plaintiff, in spite of directions of the Supreme Court for disposal of the suit within one year of 13.09.2010, continued to drag feet, as if there was no need for any hurry and it is only after arguments on the preliminary issues had been finally addressed – five years after the said directions of the Supreme Court - that she proposed the amendment by the application moved on 03.10.2015. There is absolutely no explanation worth the name, not even attempted to be offered, for such inordinate delay.

13. In these circumstances, it cannot be said that the amendment to the pleadings are such as could not have been brought on record earlier in spite of the exercise of due diligence.

14. The application for amendment, thus, is found to be an abuse of the judicial process. If such applications were to be allowed in a casual manner, as done, no litigation can even come to final adjudication for the reason one or the other party can always stall the process by proposing amendments at their whims, caprice or convenience. This cannot be permitted.

15. In the result, the petition is allowed. The impugned order is set aside. The application under Order VI Rule 17 CPC of the respondent (plaintiff of the case) is dismissed.

16. The petition and the applications filed therewith are disposed of in above terms.

R.K.GAUBA, J.

APRIL 17, 2018

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