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

+ FAO(OS)No.308/2017 & CM No. 44357/2017

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Date of decision : 8th February, 2018

GEETA GANDHI

..... Appellant

Through : Mr. M.C. Dhingra and
Mr. Syed Rehan, Advs.with
appellant in person

versus

SUBHASHINI MALIK

..... Respondent

Through : Mr. Samar Bansal, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No. 44370/2017(for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

FAO(OS) 308/2017

1. The appellant assails the order dated 12th October, 2017 passed by the learned Single Judge allowing IA No. 3857/2016 (*under Order VI Rule 17 CPC*) filed in CS(OS) No. 1416/2009 by the respondent (plaintiff) and thereby permitting amendment of the plaint with regard to the property no. C-63, Friends Colony (East), New Delhi-110025.

2. It appears that a suit *inter alia* for the relief of declaration; mandatory and permanent injunction was filed by the respondent (plaintiff) herein against the defendants which was registered as CS(OS) No. 1416/2009. In respect of the same property CS(OS) 3241/2011 was filed by the appellant, which was consolidated for trial with CS(OS) 1416/2009 by an order dated 25th February, 2014.
3. The record of the case shows that during the pendency of these suits, by an Act of Parliament in the year 2015, an amendment was effected to the Delhi High Court Act whereby the existing pecuniary jurisdiction of the Original Side of the Delhi High Court of Rs.25 lakhs was enhanced to Rs.2 crores.
4. In exercise of the power conferred under Section 4 of the Delhi High Court (Amendment) Act, 2015, the then Chief Justice of this court issued a notification no. 27187/DHC/ORGN dated 24th November, 2015 whereby all suits and other proceedings pending on the original side of this court value whereof did not exceed Rs.2 crores stood transferred to the jurisdiction of the subordinate courts.
5. As a result of the above notification, by an order passed on 8th February, 2016, CS(OS) No. 3241/2011 was transferred to the Saket District Courts.
6. It appears that the appellant herein filed IA No. 3856/2016 in CS(OS) 1416/2009 (*under Section 151 CPC*) on 8th March, 2016 seeking transfer of the respondent's suit being CS(OS) 1416/2009 also to the District Courts.

7. On 19th March, 2016, the respondent no.1 filed IA No.3857/2016 in CS(OS) 1416/2009 under Order VI Rule 17 of the CPC seeking amendment of the plaint to enhance the valuation of that suit from Rs.47,95,530/- to Rs.2,00,80,530/-.

8. Concerned with the issue of jurisdiction for entertaining such application for amendment of the plaint, the learned Single Judge passed an order dated 27th April, 2016 placing the following question for determination before a Larger Bench :

“Whether a court which does not have jurisdiction to entertain the plaint/suit, can entertain an application to amend the plaint to bring the plaint within the pecuniary jurisdiction of the court.”

9. A Full Bench of this court considered the referred question. By an order dated 6th September, 2016, the reference was answered in the affirmative whereby the majority of the Bench held that even after cessation of pecuniary jurisdiction and passing of an administrative order for transfer of the suit, the court which was earlier seized of the jurisdiction can entertain and decide the application for amendment of the plaint to enhance the pecuniary value of the suit to bring it in its jurisdiction.

10. We are informed by Mr. M.C. Dhingra, learned counsel for the appellant that the appellant had assailed this order by way of a Special Leave Petition and that by an order dated 13th February, 2017, the Supreme Court has dismissed the challenge.

As a result, the order of the Full Bench dated 6th September, 2016 has attained finality.

11. So far as the application for amendment being IA No. 3857/2016 which has been filed by the respondent is concerned, the same was considered and allowed by the learned Single Judge by the order dated 12th October, 2017. Aggrieved thereby, the present appeal has been filed by the appellant (*who is defendant no.2 in the suit*) contending primarily that neither the applicant disclosed as to how the amendment was necessary for the purposes of determining the real issue between the parties nor does the impugned order deal with this aspect of the matter at all.

12. We have heard Mr. M.C. Dhingra, ld. counsel for the appellant at length on this appeal. Mr. Samar Bansal, ld. counsel who appears for the respondent/plaintiff in the suit submits that he is present as he has seen the appeal in the cause list. We have, as such, heard him as well on this appeal.

13. Before considering the submissions made by Mr. Dhingra in support of the appeal, it would be useful to extract hereunder the relevant portion of IA No. 3857/2016 explaining the reasons for filing the application. The applicant has disclosed the reliefs claimed in para 42 of the plaint and averred and explained that, in the plaint as was laid before the court, the total valuation for the purpose of jurisdiction was at Rs.47,95,530/- on which court fee of Rs.56,321/- stood paid by the plaintiff.

14. Thereafter, in para 4 of the application, the plaintiff has stated as follows :

“4. That during the pendency of the captioned suit, it has come to the knowledge of the plaintiff

that the value of the suit property is in fact far higher than has been reflected in the plaint as filed. In particular, the value of the plaintiff's half of the terrace above the second floor of the suit property has increased substantially over the past few years due to an increase in the market rates in locality where the suit property is situated i.e. New Friends Colony."

15. As a result of the above facts, the plaintiff has placed the amendments which are sought to para 41(d) of the existing plaint stating as follows :

"5. That in light of the above, the plaintiff has been constrained to move the present application seeking the following amendment to paragraphs 41(d) of the plaint ;

41(d).For the relief of declaration declaring the plaintiff to be entitled to the area on the terrace above the second floor in the said property that has been encroached upon by the defendants and that is required to make up the area of the plaintiff on the said terrace to be half of the total terrace, without taking into account any extra area made available upon coverage of the balcony on the rear side of the second floor on the said property, and for plaintiff's share in the said terrace as may be found to be in possession of the defendants, or either of them, the suit is valued at Rs.1,70,000/- being the market value of the area of 163 sq. ft. approx. encroached by the defendants and ad valorem court fee of Rs.1,59,580/- has been paid. The plaintiff undertakes to pay deficit, if any, in the court fee upon the actual measurements of the said

terrace and determination of the area encroached upon by the defendants.

Thus, the total valuation of the suit for the purposes of jurisdiction is Rs.2,00,80,530/- and requisite court fee has been paid.”

16. The amendment application thereafter has also explained the jurisdiction of the court, despite the amendment to the valuation; that the application had been made bonafide and in the interest of justice; that no prejudice would be caused to the defendant if the application was allowed; that no material fact/deletion was being sought to be amended by the plaintiff by way of the application. An undertaking was tendered to make good the deficiency in the court fee as and when required.

17. It is trite that at the stage of consideration of an application for amendment, the court cannot go into the merits of the amendment which has been sought or the correctness of the assertions which are sought to be incorporated. An amendment has to be tested on the well settled principles that the same is not setting up a plea which is prohibited by law. The court considering an amendment application is also required to ensure that the amendment does not have the effect of taking away an admission made by the applicant and that it does not set up a new case.

18. It is admitted by the appellant before us that all that the amendment sought to incorporate was the increase in the market value of the property. The application explained that the “*value of the suit property is in fact far higher than has been reflected in the plaint as filed*”. The applicant had also further stated that in particular, the

value of the applicant's half of the terrace have been the second floor of the property has "*increased substantially over the past few years due to a increase in the market rates and locality*" where the property was situated.

19. As noted above, so far as the suit was concerned, it only made prayers for declaratory reliefs and injunctions. There was no plea relating to a recovery of money or of immoveable property which could relate to the value of the property. As such, the only impact that the variation in the valuation could have was on the amount of court fee which the plaintiff would be required to pay. As such, the amendment which was sought, neither withdrew any admission; nor set up a new case nor did it effect the substantive rights of the defendant in any manner at all.

20. We are informed that the appellant had chosen not to file any written statement to the amended plaint which was allowed by the court as back as on 12th October, 2017, despite several opportunities having been granted in this regard. We have queried Mr. Dhingra, learned counsel for the appellant with regard to the stage of the suit. The suit is stated at the stage of framing of issues. Therefore, it is obvious that the appellant does not dispute the enhancement in the valuation on merits.

21. We are informed by Mr. Samar Bansal, learned counsel for the respondent that the suit of the respondent being Suit No. 10096/2016 (Old CS(OS) No.3241/2011) has vide order dated 2nd February, 2018 in *Tr.P.(C) No.182/2017* titled *Subhashini Malik v. Geeta Gandhi* been transferred from the District Courts at Saket back to this court.

22. For all these reasons, interest of justice merit that the suit of the appellant (*which stands consolidated with the respondent's suit*) are decided in the same form.

For all these reasons, we find no merit in this appeal which is hereby dismissed.

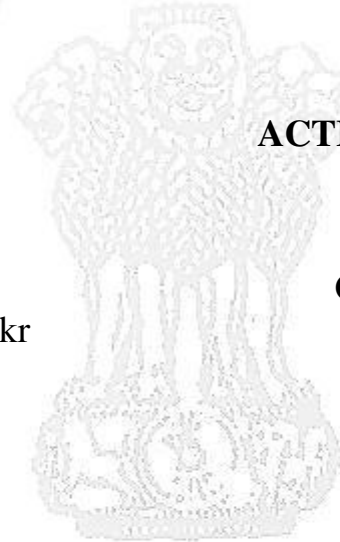
CM No.44357/2017 (Stay)

In view of the order passed in the appeal, this application does not survive for adjudication and is hereby dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 08, 2018/kr



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