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

Decided on: 09th January, 2018

+ CM(M) 1453/2017 and CM 46592/2017 and 46593/2017

SANT SINGH

..... Petitioner

Through: Mr. Praveen Suri, Advocate

versus

JAGJEET SINGH SAWHNEY (SINCE
DECEASED) THR LRS & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioner herein is defendant in the civil suit (CS no.6832/2016) pending on the file of the court of Civil Judge, West District, Delhi, it having been instituted in the year 2008 by the respondents seeking relief in the nature of recovery of possession of the suit property besides *mesne* profits / damages for its use and occupation by the petitioner. The subject property is described as first floor of property bearing no.2452, Basti Punjabiyan, Roshanara Road, Subzi Mandi, Delhi. The respondents (hereinafter referred to as “the plaintiffs”) claim to be the owner of the said property having acquired

the right, title and interest therein on the basis of partition of a larger estate, the interest wherein had been purchased earlier by sale deeds dated 18.11.1972 and 16.11.1972. The petitioner (hereinafter referred to as “the defendant”) is described in the said case as an unauthorized occupant of the subject premises.

2. A copy of the written statement submitted by the defendants indicates that he denied the allegation of he being an unauthorized occupant and instead claimed title on the basis of adverse possession for more than 30 years. It may also be mentioned here that the defendant had also filed a suit (no.164/2000) claiming himself to be the owner / landlord of the subject property, the source of title projected therein also being by adverse possession.

3. The case was at the stage of trial when the defendant moved an application on 14.03.2017 seeking to amend the written statement so as to incorporate the pleadings in the nature of paras 4 and 5 in the preliminary objections and as paras 18 and 19 on merits as under :-

“4. That in view of the averments made in the suit of the plaintiffs as they allege that the original defendant as well as her legal heir came into possession after the same has been ported out by the original tenant as per the Assessment record of the MCD of the year 1986 predecessor in interest of the defendants had purchased the suit property, therefore, there exists a relationship of landlord and tenant and in view of the provisions of Section 14 (1)(b) of DRC Act read with Section 50 of the DRC Act, the jurisdiction of the Civil Courts are barred and the suit of the plaintiffs is liable to be dismissed being barred due to provisions of Delhi Rent Control Act.

5. That the suit of the plaintiffs in view of their averments in the plaint regarding the sub-lettee of original tenant to the predecessors as well as the original defendant and her successors, the suit is hit by the provisions of Section 41(h) of the Specific Relief Act as the plaintiffs have the alternative remedy provided under Section 14 (1)(b) of the DRC Act.”

18. That para 18 is denied being wrong and incorrect. It is submitted that no cause of action ever accrued in favour of the plaintiffs and against the defendant either in May, 2000 or on 2nd Jan., 2000 or at any point of time. The suit of the plaintiffs does not disclose any cause of action and is even hit by provisions of Section 50 of Delhi Rent Control Act and Section 41(h) of the Specific Relief Act. The plaintiffs have no right to maintain the present suit.

19. That para 19 is a legal para and is not denied. However, it is submitted that the suit of the plaintiffs is not maintainable. Even otherwise, the jurisdiction of this Hon'ble Court is barred in view of the provisions of Section 50 of Delhi Rent Control Act and Section 41(h) of the Specific Relief Act.”

4. The Civil Judge rejected the abovesaid application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) by order dated 08.08.2017 on the ground that such amendments could not be allowed since the trial has commenced and there was no explanation offered as to why such pleadings could not have been raised earlier in the written statement filed initially. The petitioner then moved an application for review under Order XXXVII Rule 1 CPC which was also declined by order dated 30.10.2017.

5. The petition at hand brings a challenge to both the said orders dated 08.08.2017 and 30.10.2017.

6. At the outset, the counsel for the petitioner was called upon to explain the import and effect of the pleadings as proposed to be incorporated by preliminary objections no. 4 and 5 as have been quoted above, the proposed amendments by way of paragraphs 18 and 19 extracted above being consequential to the former. The counsel for the petitioner though conceding that the proposed averments are not happily worded and do not convey coherently the facts sought to be pleaded insisted that the amendments still be allowed, arguing that the issues thereby raised are issues of law only.

7. The submission of the counsel, however, cannot be accepted as the amendments are not intended to raise only questions of law. The petitioner is clearly trying to make out a new case by either abandoning the original defence or as an alternative thereto by raking up the issue of sub-tenancy. In the original written statement, there was not even a whisper of the interest in the subject property having been acquired in the capacity of a tenant or a sub-tenant directly or indirectly. The sole defence raised was that the defendant has been in possession of the said premises for the last thirty years and, thus, had become the owner by adverse possession. There is no explanation worth the name in the application under Order VI Rule 17 CPC as to why such facts could not have been pleaded earlier. Apparently, the design is to muddy the waters and cause unnecessary delay.

8. The counsel referred to *State Bank of Hyderabad Vs. Town Municipal Council*, (2007) 1 SCC 765 to argue that the proviso to Rule 17 of Order VI cannot apply since the case was instituted prior to

coming into force of the Code of Civil Procedure (Amendment) Act, 2002 on 01.07.2002. This argument only needs to be noted and rejected for the reason that the written statement which is sought to be amended by the application moved on 14.03.2017 was submitted fourteen years ago, on 10.08.2003, after the said amendment of CPC in 2002.

9. The petition is, thus, found to be wholly frivolous. It is dismissed with costs of Rs.50,000/- to be deposited with Delhi High Court Legal Services Committee within a week. The pending applications also stand dismissed.

JANUARY 09, 2018

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R.K.GAUBA, J.