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

Decided on: 26th July, 2019

+ **CM(M) 1103/2019 & CM APPL. 33440-33441/2019**

R C ANAND

..... Petitioners

Through: Mr. Kuldeep Sehrawat, Advocate.

versus

JOGINDER SINGH & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 33441/2019 (*exemption*)

Exemption allowed subject to all just exceptions.

The application is disposed of.

CM(M) 1103/2019 & CM APPL. 33440/2019

1. The present petition under Article 227 of the Constitution is directed against an order dated 20.02.2019, in CS No. 9771/2016, by which the Additional District Judge-12, (Central) Tis Hazari Courts, Delhi has dismissed the application of the petitioner/plaintiff for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 [hereinafter, "the CPC"].

2. The suit was filed by the plaintiff on 13.06.2007, for specific performance of an agreement to sell dated 04.12.2006. It was originally

filed against defendant no. 1, who was the vendor in the agreement to sell. The address of the suit property mentioned in the plaint, as also in the agreement to sell was RZ-R 185 (Old number), RZ-R 223 (New number), Gali No. 5, Nihal Vihar, Delhi, falling in Khasra No. 4/16 of the revenue estate of Village Nangloi Sayyed, Delhi.

3. During the course of proceedings, it transpired that the suit property had been sold to defendant nos. 2 and 3, and they were also impleaded. Defendant Nos. 2 & 3 took the stand that the suit property is not the property acquired by them, which bears the property no. RZR-261, Khasra No. 4/16, Nihal Vihar, New Delhi-110041, and not RZR-185, or RZR-223. One of the issues framed in the suit is whether the defendant nos. 2 and 3 have been unnecessarily impleaded as a party, since the property no. RZR-261 sold to them is not the suit property in question. After framing of issues, evidence was led before the Trial Court and concluded on 26.09.2017.

4. After the conclusion of evidence, the plaintiff moved the application under consideration for amendment of the plaint in which the amendment sought is with regard to the address of the suit property itself. It is contended by the plaintiff that the location and situation of the suit property remained the same, but the defendant had not given the correct address of the suit property. The plaintiff, therefore, sought an amendment of the address, on the basis of an electricity bill (issued in the name of defendant no.3), which had recently come into the possession of the plaintiff. The address mentioned in the electricity bill, and sought to be incorporated by the plaintiff in the original plaint, was RZR-261, Khasra No. 4/16, Nihal Vihar, New Delhi-110041.

5. The Trial Court has dismissed the application of the plaintiff. It has been recorded in the impugned order that the application was opposed by the defendant nos. 2 and 3 on the ground that the plaintiff wanted to change the address of the suit property in order to maintain his suit in respect of the property which has been sold by defendant no. 1 to the defendant no. 2, and thereafter to defendant no. 3. The Trial Court has relied upon the judgment of the Supreme Court in *Revajeetu Builders and Developers vs. Narayanaswamy and Sons & Ors.* (2009) 10 SCC 84, to hold that the amendment is intended to prejudice the case of the defendants, and cannot be permitted.

6. Having heard learned counsel for the petitioner, I do not find any reasons of interference with the impugned order, under Article 227 of the Constitution. The principles governing the amendment of pleadings are well settled. To the extent that an amendment would prejudice the case of the opposite parties, it is not permissible, despite the generally liberal approach taken by the Courts, in order to resolve the real controversy between the parties. In *Revajeetu* (supra), these principles have been crystallized, thus:-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

In the present case, the defendant nos. 2 and 3 have throughout taken the stand that the property sold to them is different from the property in respect of which the plaintiff has filed the suit. For the plaintiff to amend the suit in respect of this crucial element, particularly at this stage of proceedings, would certainly cause prejudice to the case of the defendants.

7. There is a further reason which supports the view taken by the Trial Court. The application for amendment was made after the parties had led evidence in the suit. The proviso to Order VI Rule 17 of the CPC was, therefore, applicable to the present case, and the party seeking amendment of the pleading after the commencement of the trial must satisfy the Court that it could not have sought the amendment before commencement of the trial, despite due diligence. Reference in this regard may be made to the judgment of the Supreme Court in *M. Revanna vs. Anjanamma & Ors.*, (2019) 4 SCC 332, wherein it has been held as follows:-

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The

proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

8. A plaintiff in a suit for specific performance who avers that he was not properly informed as to the address of the property in question, and took no steps to satisfy himself on this count, prior to filing the suit or even thereafter, when an issue was raised on this aspect, cannot, in my view, be said to satisfy the test of due diligence. The application was, therefore, highly belated, and was rightly disallowed by the Trial Court.

9. Learned counsel for the petitioner has relied upon the decision of this Court in *Nazir Hussain vs. Neeta Goel & Ors.*, 178 (2011) DLT 660, and particularly paragraph 4 thereof, in which this Court has held as follows:-

“4. The trial Court seems to be unaware of manner of numbering given in Old Delhi areas. In most of the Old Delhi areas a cluster of number is given to the properties and the properties are referred by this cluster of numbers. The amended site plan which the petitioner placed on record of the trial Court would have made it clear to the trial Court that the petitioner had not changed the site plan but he only mentioned the amended number of the properties on the top, remaining site plan was as it was. It is also not the case that the petitioner had moved an application under Order 6 Rule 17, CPC at belated stage. The petitioner had a right to rectify the plaint if the

property number was inadvertently or due to lack of knowledge not correctly stated. The amendment was not going to affect the respondent in any manner or to cause any prejudice to the respondent in any manner. The only prayer of the petitioner was that no unauthorized construction should have been allowed. This is the right of every citizen to see that building bye-laws and laws are followed and unauthorized constructions are not carried in the neighborhood. Unauthorized construction creates civic problems for the entire neighborhood and affects material rights of the neighbours. Neighbours have a right to approach the Court against unauthorized construction, I therefore do not think that there was any flaw in locus standi of the petitioner in filing the suit. Neither the amendment being sought by the petitioner was in respect of any other property except the property about which the petitioner had already approached the Court. The petitioner only wanted to rectify the plaint so as to give correct numbers of the property, the site plan remained the same.”

10. It is evident from the aforesaid extract that the view taken by this Court turned on the specific location of the property in question. The plaint in the aforementioned case had originally been filed describing the number of the adjoining property as 3645, Pahari Dheeraj, which was sought to be amended to 3645-3648, Pahari Dheeraj. To this extent, the Court noted that in most of the areas of Old Delhi, a cluster of numbers is given to the property. The Court also found that the identification of the property in the site plan remained unchanged, and that the petitioner had not moved the application for amendment at a belated stage. The case of the plaintiff herein does not, therefore, square with the factors ascertained by the Court in the aforesaid judgment, and is not applicable to the facts of the present petition.

11. In the circumstances aforesaid, the present petition is dismissed with costs of ₹7,500/- to be paid to the Delhi High Court Bar Association Library Fund.

12. A copy of the order be given *dasti* under the signature of the Court Master.

PRATEEK JALAN, J.

JULY 26, 2019

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