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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19th September, 2019
+ **CM (M) 1364/2019**

TAPAN KAR

..... Petitioner

Through: Mr. Kabir Dixit and Mr. Sourish
Bagchi, Advocates. (M:9999087047)

versus

CHRISTIAN INSTITUTE FOR THE STUDY OF
RELIGION AND SOCIETY

..... Respondent

Through: Mr. S. K. Maniktala, Mr. Vinod
Kumar and Mr. Udit Maniktala,
Advocates. (M:9810058928)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner/Defendant (*hereinafter 'Defendant'*) is aggrieved with the order dated 18th July, 2019 by which the application filed by the Defendant for amending the written statement under Order VI Rule 17 CPC was dismissed by the Id. Trial Court. The Respondent/Plaintiff - Christian Institute for the Study of Religion and Society (*hereinafter 'Plaintiff Society'*) is a charitable organization, which had filed the present suit seeking possession of a portion of property bearing no. Block-C, 14, Jangpura - B, Mathura Road, New Delhi-14 (*hereinafter 'suit property'*). The prayers sought in the suit are for possession and use and occupation charges from the Defendant.

2. The case of the Plaintiff Society is that the Defendant was employed by the Plaintiff Society for one of their projects, which was run by William Carey Study and Research Centre (WCSRC). He was inducted into the suit

property by one of its Directors. However, he refused to vacate the suit property and hence the present suit.

3. The Defendant filed its written statement in the suit and in paragraph no. N, O and 5 pleaded as under:

“N. It is submitted that when the possession over the suit property was handed over to the Defendant, the Plaintiff Society, through its Director, handed over the possession with an explicit promise that the suit property will belong to the Defendant and his wife. Pertinently, the possession was given without any terms and conditions.

O. Plaintiff is aware about the details of defendant and his wife having occupation and the exclusive possession over the suit premises since the year 1991 and the said occupation remained undisturbed till the year 2015 when the XXVII biennial meeting of the Plaintiff society took place.

....

5. That the contents of Para 5 are false, wrong and misconceived and are denied as such. The Defendant and his wife joined the Plaintiff Society in the year 1983 and continued to work with the Plaintiff Society till 2006, when the Plaintiff Society went out of funds. The Defendant and his wife, throughout their engagement with the Plaintiff Society were not given any privilege or accommodation in connection with his engagement with the Plaintiff Society. The possession was handed over to the Defendant and his wife by the Plaintiff Society, through its Director, in 1991 on unconditional basis and they were told that this will remain as their personal property and it will belong to the Defendant and his wife in times to come. No one from the Plaintiff Society objected to this and Plaintiff Society, through its Directors and office bearers, even endorsed this in different meetings with the Defendant and his wife.”

4. The Plaintiff Society then moved an application under Order XII Rule 6 CPC, which is pending adjudication. During the pendency of the application under Order XII Rule 6 CPC which was based on various admissions made in the written statement, an application under Order VI Rule 17 CPC has been moved by the Defendant on the ground that he wishes to clarify various averments made in the original written statement. The application specifically states in paragraph 6(c) as under:

“c. The following paragraph i.e. paragraph "5" is being amended only to the extent of making good the incorrect and erroneous facts. It is factually incorrect and erroneous to say that the possession over the Suit premises was handed over to the Defendant and his wife by the Plaintiff Society through its Director. In fact, the possession was handed over by Dr Saral Chatterjee, without any authority to. do so from the Plaintiff Society. Further, the Defendant and his wife had never joined the Plaintiff Society and the same has been wrongly and erroneously mentioned in the 2nd and 3rd line of Para 5. The amended para is reproduced below:

"5. That the contents of Para 5 are false, wrong and misconceived and are denied as such. In response it is stated that although the Defendant admits that he was engaged with WCSRC, it is denied that WCSRC is a Project/Centre of the Plaintiff Society. The Defendant submits that WCSRC and the Plaintiff Society are two separate entities. The Plaintiff Society may be held to strict proof in respect of its averment that WCSRC is a Project/ Centre. However, it is further stated that the said engagement with WCSRC was never full time, permanent, continuous or exclusive as the Defendant and his wife were working with other organizations/ schools/ institute as- full-time employees and drawing fixed salaries. There were long and specific periods of cessation from engagement with WCSRC when Defendant and his

wife were not engaged with WCSRC in any manner whatsoever. In this respect it is submitted that for a period one year commencing from August 1992, the Defendant and his wife were working as full time teachers in Bal Bharti School, Pitampura and were drawing regular monthly salaries. Also, the Defendant and his wife were associated with a society by the name of Alarippu for a long period of 4-5 years starting from 1991. The Defendant and his wife performed at shows and events of Alarippu and received regular payments. Further, the Defendant's wife was working as a full time dance teacher in Dev Samaj Modern School, for a period of six months in the period 1993-94. In all of the aforesaid cases of employment of Defendant and his wife with other organizations/school, they were not engaged with WCSRC in any manner whatsoever.

Further, Plaintiff Society's averment that "in connection with his aforesaid engagement, the defendant was provided accommodation by the Plaintiff Society" is factually incorrect, wrong, mala fide and deliberately misconstrued. The Defendant and his wife, throughout their engagement with WCSRC were not given any privilege or accommodation in connection with their engagement with WCSRC. Neither they were entitled to any such privilege or accommodation on account of their engagement with WCSRC particularly when the said engagement was never full time, permanent, continuous or exclusive. The possession was handed over to the Defendant's wife by Dr. Saral Chatterjee, Director of WCSRC on account of his love and affection towards Defendant's wife without authority from the WCSRC or from the Plaintiff Society. The possession of the Defendant and his wife was hostile ab initio. The contents of Para D1 to D10 are, reiterated as further response to this para."

5. After averring in paragraph 6(c) as extracted above, the Defendant sought to include several paragraphs in the written statement by way of the application for amendment, which was rejected by the Trial Court. Ld. counsel for the Defendant submits that the impugned order has incorrectly arrived at a conclusion, that, by seeking to amend the written statement, the Defendant wishes to withdraw admissions made or challenge the title of the Plaintiff Society. Ld. counsel points out that by way of the amendment, the Defendant merely wishes to clarify the position in respect of how they came in the possession of the suit property. It is submitted by Ld. counsel that the defence of the Defendant, right from inception, is that they were in occupation of the property legally by way of the defence of adverse possession. He submits that the amendments have been wrongly rejected and the impugned order deserves to be set aside.

6. On the other hand, Ld. counsel for the Plaintiff Society points out that the various admissions have been made in paragraph N and paragraph 5 of the written statement, which the Defendant seeks to resile from and hence the amendment in the written statement has been rightly rejected by the Ld. Trial Court. It is further submitted that the manner in which the Defendant pleads that the averment made in the earlier Written statement is an incorrect fact, makes him liable for action under Section 340 Cr.P.C.

7. After hearing Ld. counsels for the parties and perusing the pleadings on record, it is clear that in the impugned order, the Trial Court has narrated the nature of the amendments which the Defendant wishes to incorporate. Paragraph 20 of the impugned order is relevant and extracted herein below:

“20. It is further case of the plaintiff that the plaintiff

sent a notice dated 04.06.2016 requiring the defendant to vacate and deliver the possession of the suit property and user charges. In response thereto, the defendant, in para No. 5 of written statement, stated that he and his wife joined the plaintiff society in the year 1983 and continued to work with the plaintiff society till 2006. He stated, in para No. 8 of written statement, that he and his wife, after termination of their employment were asked to leave the suit property vide letter dated 09.03.2006. By way of proposed amendment, the defendant is intending to withdraw the admission, as contained in para No. 5 of written statement, by stating. He is setting up a case that WCSRC and the plaintiff society are two separate entities. He is intending to withdraw admission that the defendant and his wife joined the plaintiff society in the year 1983 and continued the work with the plaintiff society till 2006. He is even intending to withdraw admission, as contained in para No. 5 of written statement, that the possession of the suit property was handed over to the defendant and his wife by the plaintiff society, through its director. He is intending to incorporate the facts as to how Dr. Saral Chatterjee met Ms. Dalia Kar and brought her to Delhi. He is also intending to incorporate the period and organization where the defendant and his wife worked in the year 1992-93 and 1994.”

8. In the above paragraph the Id. Trial Court, has clearly captured that the Defendant wishes to withdraw the admissions which were made including the manner in which he and his wife had joined the Plaintiff Society and continued to work with the Plaintiff Society till 2006. In fact, the Trial Court also points out that the clear admission in paragraph 5 of the written statement is sought to be resiled from by way of the amendments.

9. This finding of the Trial Court is clearly borne out on a comparison of paragraph N and paragraph 5 of the original written statement and the

amended written statement which the Defendant wishes to file. In paragraph N, the Defendant had clearly admitted the manner in which he had come in the possession of the suit property - wherein it is recorded that the possession was handed over to the Defendant by the Plaintiff Society through its director. Paragraph 5 of the original written statement also clearly admitted that the Defendant and his wife had joined the Plaintiff Society in the year 1983.

10. Further, the original written statement read as a whole did not challenge the authority of the director or raise any plea as to the title of the Plaintiff Society. All these averments made in the original written statement are attempted to be withdrawn in the amendment being sought to be made and further explanations are being added, which would definitely cause prejudice to the suit of the Plaintiff Society. Though, trial of the suit is yet to commence, a perusal of the amendments sought to be introduced clearly show that the same are withdrawal of admissions and a completely new case is sought to be set up by Defendant in the amended written statement.

11. The manner in which the Defendant is seeking to resile from the admissions is clearly not *bonafide* as has been held by the Trial Court. In fact, the Trial Court has taken the correct position in law that the Defendant cannot be allowed to make these amendments in the original written statement so as to prejudice the Plaintiff Society's case. The finding of the Trial Court in paragraph 22 reads as under:

“22. On thoughtful consideration of the mater, it is abundantly clear that the proposed amendments are neither imperative nor necessary for proper and effective adjudication of the case. The application for amendment is not bonafide. The amendment would cause serious

prejudice to the plaintiff which cannot be compensated in monetary terms. The proposed amendment would change the fundamental character and nature of the suit. The proposed amendment would change the nature and character of the suit from a suit by an employer against his employee for seeking vacation of the accommodation given to him during his tenure in connection his employment to a title suit. The proposed amendment would displace the plaintiff completely from the admissions made by the defendant in the written statement and would cause irretrievable prejudice to the plaintiff.”

12. The Trial Court has also observed that the amendment being sought by the Defendant is not *bonafide* and was actually intending to impose costs of Rs.2 lakhs on the Defendant.

13. A perusal of the manner in which the original written statement and the current amendments are being sought to be made by the Defendant clearly show that the amendments are not *bonafide* and they are completely beyond the provisions of Order VI Rule 17 CPC and cannot be permitted as per the settled legal position. The Petitioner seeks to assert rights in the property on the ground of adverse possession. He has been in occupation of the property since 1991 without paying any charges despite admitting in the written statement that he was put in possession by the Director of the Plaintiff Society.

14. Accordingly, in addition to the cost of Rs.25,000/-, which has already been imposed by the Trial Court, further costs of Rs.1 lakh is imposed upon the Defendant to be paid to the Plaintiff Society within a period of two weeks from today, for the delays being caused, the manner in which the Defendant is seeking to resile from the position taken in the written

statement initially filed and the fact that the Plaintiff is a charitable organisation.

15. The petition is dismissed in the above terms.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 19, 2019

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