

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

% Date of decision: 08th February, 2019

+ FAO(OS) 73/2018 & CM. No. 16948/2018

DEEPAK CHAWLA

..... Appellant

Through: Ms. Shobha Ramamoorthy,
Mr. Sri Ram J. Thalapathy,
Mr. Shilp Vinod and Mr. Pushkar Raj
Kumar, Advs.

versus

RAJEEV CHAWLA

..... Respondent

Through: Mr. Manan Batra and Mr. Abhimanyu
Gupta, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this appeal is to an order dated March 19, 2018 passed by the learned Single Judge in IA NO. 1508/2017, which was an application filed by the appellant herein under Order 6 Rule 17 of the CPC for amendment of the writ statement.

2. It was the ground of the appellant, that the plaintiff had missed out the partition of three other properties vis 152, Bhagat Singh Market, Connaught Place, New Delhi, Plot at Saraswati Kunj, Gurgaon and F-71, Bhagat Singh Market, Connaught Place, New

Delhi and for sale proceeds of Rs.15 lakhs in the sale of land (two and a half acres) at Sohna Road.

3. It was conceded by the appellant-defendant that a reference of these properties was made in the written statement filed in October, 2014 and in the amended written statement filed in March, 2015 but because of maintaining harmony, he did not take any action for partition of these properties.

4. The learned Single Judge noted that the Property No. 152, Bhagat Singh Market, Connaught Place, New Delhi is registered in the name of the respondent No.1- plaintiff and Property No. F-71, Bhagat Singh Market, Connaught Place, New Delhi is registered in the name of the mother of the parties, who is still alive. It is also noted by the learned Single Judge that it is the stand of the respondent No.1 – plaintiff that there is no such plot at Saraswati Kunj, Gurgaon ever purchased by the family. Qua the sale proceeds of Rs.15 lakhs in the sale of land (two and a half acres) at Sohna Road, it is submitted that this plot was in the name of the plaintiff – respondent No.1 and he sold it way back, prior to the filing of the suit.

5. The learned Single Judge noting that the appellant - defendant knew, the properties existing in the name of others even prior to the filing of the written statements and rather has referred to the properties in the written statement filed in 2014 and so also in the amended written statement in 2015 but did not take any action for declaration or for cancellation of suit ownership documents, no case is made out for amendment because of the delay, moreso the trial has started.

6. Ms. Shobha Ramamoorthy, learned counsel appearing for the appellant – defendant would submit in spite of due diligence, the appellant could not mention the prayer regarding the properties for partition. She by drawing our attention to page 87 of the paper book, which is an application seeking amendment of the written statement, states that she intends to seek amendment in the written statement in terms of para 7 of the said application. According to her, by the proposed amendment, the appellant – defendant intends to add the following in the written statement:-

“I. In Para.6 at pg.5 of the written statement-end of the page, the following portion is found:

The plaintiff also got a plot at Gurgoan from the fund of the family. That thus there are pool of properties in the HUF whereas the relief is pertaining to one property which is not permissible.

The same may be amended as:

The plaintiff also got a plot at Gurgaon from the fund of the family. Another property being the first floor of S214, GK1, New Delhi was purchased and later sold. That thus there are pool of properties in the HUF whereas the relief is pertaining to one property which is not permissible.

II. In the prayer of the written statement at pg.35, the following portion is found:

PRAYER

*That the contents of the prayer filed by the Plaintiff are wrong and denied in toto. It is specifically denied that the plaintiff is entitled for any relief as sought for by the plaintiff in the present suit on the contrary it is submitted that the suit is liable to be dismissed with exemplary cost.
The same may be substituted / Amended as:*

PRAYER

In the facts and circumstances above mentioned and in the light of the fact that the parties cannot live together in the suit property or be joint any further, the defendant most respectfully prays that this Hon'ble Court may most graciously be pleased to:

A. Dismiss the suit filed by the plaintiff with costs;

B. Pass a preliminary decree in favour of the defendant declaring that the defendant is entitled to 1/3rd share in the properties owned by the HUF, as on date, viz.

- a. 152, Bhagat Singh Market, Kannaught Place, New Delhi;*
- b. Plot at Saraswati Kunj, Gurgaon;*
- c. F71 Bhagat Singh Market, Connaught Place, new Delhi*
- d. Total sale proceeds of Rs.15 lakhs in the sale of a land (2 ½ acres) at Sohna Road and*
- e. E64, Greater Kailash Enclave Part 1, New Delhi.*

C. Pass a consequential decree of perpetual injunction restraining the plaintiff and other defendants from interfering in

the peaceful occupation of the 1/3rd share of the defendant No.1 in the properties mentioned above.

D. Appoint a Commissioner to divide the properties by metes and bounds and put the defendant in separate possession of 1/3rd share and

E. Pass a final decree

F. Order costs of the suit in favour of the defendant and against the defendant.

G. Any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

7. We are not impressed by the submission made by the learned counsel for the appellant for the reasons stated by the learned Single Judge. We find that in the written statement at page 51 of the paper book, the appellant - defendant in para 6, has stated as under:-

“XXXXX

XXXXX

XXXXX

That the defendant reverse its right to initiate the action against the gift deed and these two properties i.e. F-71 Bhagat Singh Market, Connaught Place New Delhi & 152 Bhagat Singh Market, Connaught Place New Delhi. That the present suit is also barred by order 2 rule 2 CPC as the relief qua these properties were not demanded by the plaintiff. That the sale deed in the name of the mother is hit by the Benami transaction prohibition act 1988."

8. The aforesaid shows, a reference was made to the properties F-71, Bhagat Singh Market, Connaught Place, New Delhi and 152, Bhagat Singh Market, Connaught Place, New Delhi. He has also

stated that he reserves his right to initiate action against the Gift Deed qua these two properties. Admittedly, no prayer with regard to partition of these properties was sought by the appellant – defendant in the written statement. That apart, the plea with regard to Property No. S-214, Greater Kailash, Part-I, New Delhi is concerned, the appellant – defendant has, in his application for amendment has stated as under:-

“XXXXX

XXXXX

XXXXX

In spite of due diligence of the defendant, while mentioning the properties that were sold, one property was left out in the narration of facts viz. First Floor S-214, Greater Kailash 1, New Delhi. Further, the written statement has also mentioned about initiating action against the remaining properties viz. 152, Bhagat Singh Market, Connaught Place, New Delhi, plot at Saraswati Kunj, Gurgaon, and F71, Bhagat Singh Market, Connaught Place, New Delhi and total sale proceeds of Rs.15 lakhs in the sale of a land (2 ½ acres) at Sohna Road.”

9. On a specific query when was the property S-214, Greater Kailash, Part-I, New Delhi sold, the learned counsel for the appellant – defendant states it was in the year 1994. In other words, the appellant – defendant was privy to the information with regard to the properties of which he is seeking amendment. The suit was filed in the year 2014. Learned counsel for the respondent – plaintiff is right in contending that no facts have been averred that

the appellant – defendant lacked knowledge of the property / properties and related transactions because of which he could not incorporate the averments as now being sought by way of amendment.

10. That apart, we find that the learned counsel for the appellant – defendant had conceded to the fact that the trial has commenced. If that be so, the learned Single Judge was justified in denying the amendments sought in the written statement. The said conclusion is in conformity with the provisions of Order 6 Rule 17 CPC. We do not see any merit in the appeal. The same is dismissed.

CM. No. 16948/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 08, 2019/ak