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

Reserved on: 3rd July, 2019

Pronounced on: 19th August, 2019

+ **CM(M) 583/2018 & CM APPL. 20259/2018**

MALVINDER SINGH & ORS Petitioners

Through: Ms. Manjula Gandhi, Advocate
with Ms. Bhawna and Mr.
Aditya Kapoor, Advocates

versus

GOVIND BALLABH BHAGAT & ORS Respondents

Through: Mr. Abdul Kalam, Advocate

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. This petition under Article 227 of the Constitution of India is directed against an order dated 27.03.2018 in CS No.10830/2016, whereby the ADJ-06, South-East, Saket Courts, New Delhi allowed the application of the plaintiffs [respondents herein] under Order VI Rule 17 of the Code of Civil Procedure, 1908 ["CPC"] for amendment of the plaint.

Facts

2. The respondents/plaintiffs in the suit are the descendants of one Khyali Ram Bhagat, plaintiff No.1 being his son [Govind Ballabh Bhagat], and plaintiff Nos. 2 to 4 being the legal heirs of his

predeceased son [Late Lalit Mohan Bhagat]. The respondents herein filed the suit on 22.12.2014 in respect of a property bearing No. 572/2, Masjid Road, Bhogal, New Delhi-110014.

3. The claim in the plaint was that the plaintiffs/respondents were the descendants of Late Khyali Ram Bhagat and Late Kamla Sharma and that the plaintiff No.1 and his brother [late Lalit Mohan Bhagat] were born out of the wedlock between these two persons. It is alleged that Kamla Sharma had two sisters, namely, Vimla Sharma and Sarla Sharma. They were the daughters of one Ram Karan Das. The claim in the suit was that the suit property had been inherited by the three sisters from their father, and that the plaintiffs/respondents were their only remaining legal heirs, as the two sisters of Kamla Sharma [Vimla Sharma & Sarla Sharma] died issueless and without leaving any legal heirs. It was further averred that the two sisters of Kamla Sharma had executed a general power of attorney in her favor, in respect of the suit property, on 26.06.1995. It is contended by the plaintiffs that the defendants [petitioners herein] have illegally claimed to be the owners of the suit property under a purported sale deed dated 16.05.2013, allegedly executed by Sarla Sharma in their favour. Consequently, the plaintiffs/respondents have claimed a declaration that the sale deed dated 16.05.2013 is null and void, and possession as well as occupation charges in respect of the part of the suit property, said to be in the possession of defendant no 3 [petitioner No.3 herein].

4. In the written statement dated 12.03.2015 filed by the defendants/petitioners, the case of the plaintiffs was rebutted unequivocally. Pertinently, the defendants stated that Kamla Sharma

had predeceased Sarla Sharma, who had survived the two sisters [Kamla Sharma and Vimla Sharma], and became the sole owner of the suit property. The defendants therefore claimed that the sale deed dated 16.05.2013 executed by Sarla Sharma in their favour was valid and legal. The defendants claimed that Kamla Sharma was in fact unmarried and died without leaving any legal heirs. It is their case that, after Kamla Sharma's death on 27.05.2009, her sisters became owners of the suit property to the extent of 50% each, and after the death of Vimla Sharma on 02.02 2011, Sarla Sharma became the sole legal owner of the suit property.

5. In the replication dated 13.07.2015 filed by the plaintiffs/respondents, they continued to assert that late Kamla Sharma was the wife of Khyali Ram Bhagat and that they were the only legal heirs.

6. However the plaintiffs/respondents subsequently filed an application under Order VI Rule 17 of the CPC in October 2017. They sought to amend the plaint to the effect that Kamla Sharma was the step-mother of plaintiff No. 1 and his brother [Late Lalit Mohan Bhagat, under whom the other plaintiffs/respondents have claimed their respective rights], and not their biological mother. The case made out in the amendment application is that the plaintiffs had inadvertently described Kamla Sharma as their biological mother, rather than their step-mother.

7. This application was also resisted on behalf of the defendants on the ground that it introduces an entirely new and different case, contrary to the original pleadings. The defendants referred to the order

passed by this Court dated 21.09.2015 [prior to transfer of the suit to the Trial Court], by which the plaintiffs/respondents were directed to file proof of their lineage, and claimed that, by way of the amendment application, the plaintiffs are in fact trying to overreach the order of this Court.

8. By the impugned order dated 27.03.2018, the Trial Court allowed the application of the plaintiffs/respondents on the ground that, in a previous litigation between the plaintiffs inter-se, the plaintiffs had described Kamla Sharma as their step-mother, and not their biological mother. It was further held by the Trial Court that the amendment sought does not affect the right of the defendants who, in any event, claim to be bona fide purchasers of the suit property.

Submissions

9. Ms. Manjula Gandhi, learned counsel for the petitioners submitted that the aforesaid facts show that the amendment application made by the plaintiffs was not bona fide. The plaintiffs' assertion that the error was on account of an inadvertent mistake is, according to her, falsified by the repeated assertions made by the plaintiffs/respondents in their plaint as well as their replication to the effect that Kamla Sharma was the mother of plaintiff No. 1 and of the predecessor in interest of the other plaintiffs. Ms. Gandhi further contented that the amendment sought in fact constitutes a fundamental alteration in the cause of action itself and cannot be permitted in accordance with the principles relating to Order VI Rule 17 of the CPC.

10. Mr. Abdul Kalam, learned counsel for the respondents on the other hand, submitted that an amendment which seeks to bring on record the true state of affairs, as admitted by the defendants themselves, ought to be permitted. He urged that an application for amendment, particularly at a preliminary stage of the suit and before the framing of issues, ought to be permitted in the interest of justice.

Analysis

11. The resolution of the dispute between the parties turns on the proper interpretation of Order VI Rule 17 of the CPC. The provision is set out below:

“17. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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 trial.”

12. The above Rule has been explained in several judgments of the Supreme Court. After a survey of several Indian and English authorities, the Supreme Court in *Revajeevu Builders and Developers vs. Narayanaswamy and Sons and Ors.* (2009) 10 SCC 84 stated the principles governing amendment of pleadings as follows:

“Whether amendment is necessary to decide real controversy

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

No prejudice or injustice to other party

59. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

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Costs

61. The courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive:

(i) At what stage the amendment was sought.

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage.

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic.

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of the amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

62. The purpose of imposing costs is to:

(a) discourage mala fide amendments designed to delay the legal proceedings;

(b) compensate the other party for the delay and the inconvenience caused;

(c) compensate the other party for avoidable expenses on the litigation which had to be incurred by the opposite party for opposing the amendment; and

(d) to send a clear message that the parties have to be careful while drafting the original pleadings.

Factors to be taken into consideration while dealing with applications for amendments

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.”

13. The Courts have generally adopted a liberal approach to amendment of pleadings. In *B.KNarayana Pillai vs. Parameswaran Pillai And Anr.* (2000) 1 SCC 712, the Supreme Court held as follows:

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

4. This Court in A.K. Gupta & Sons Ltd. v. Damodar Valley Corpn. [AIR 1967 SC 96 : (1966) 1 SCR 796] held:

“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal [(1887) 19 QBD 394 : 56 LJ QB 621] . But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan [AIR 1921 PC 50 : ILR 48 Cal 110] and L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357 : 1957 SCR 438]

The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (Cropper v. Smith [(1884) 26 ChD 700 : 53 LJ Ch 891 : 51 LT 729]) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (Kisandas Rupchand v. Rachappa Vithoba Shilwant [ILR (1909) 33 Bom 644 : 11 Bom LR 1042] approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363 : 1957 SCR 595]).

The expression ‘cause of action’ in the present context does not mean ‘every fact which it is material to be proved to entitle the plaintiff to succeed’ as was said in Cooke v. Gill [(1873) 8 CP 107 : 42 LJCP 98 : 28 LT 32] in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one

would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corpn. Ltd.* [(1962) 2 All ER 24 (CA)] and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas': *Dornan v. J.W. Ellis and Co. Ltd.* [(1962) 1 All ER 303 (CA)] This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in *Ganga Bai v. Vijay Kumar* [(1974) 2 SCC 393] this Court held: (SCC p. 399, para 22)

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court."

In *Ganesh Trading Co. v. Moji Ram* [(1978) 2 SCC 91] it was held: (SCC p. 93, para 4)

"4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate

steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

14. Applying these principles to the facts of the present case, it is evident that the real controversy between the parties is as to the

entitlement of the plaintiffs/respondents to the suit property, as against the case of the defendants/petitioners that they had purchased the suit property from Sarla Sharma vide sale deed dated 16.05.2019. Fundamentally, that controversy in the suit remains unchanged by the proposed amendment. Further, to refuse the amendment would require the plaintiffs to go to trial on the original plaint – which, according to all the parties, is factually incorrect. Such a course should normally be avoided, particularly when the amendment is sought prior to the commencement of trial.

15. The next question is of the prejudice caused to the defendants/petitioners. Learned counsel for the petitioners drew my attention to Section 15 (1) of the Hindu Succession Act, 1956 to submit that the original claim of the plaintiffs/respondents as biological descendants of Kamla Sharma was intended to come within the scope of Section 15 (1) (a) of the said Act. To the extent that the plaintiffs now claim Kamla Sharma to be the step-mother of the plaintiff No. 1 and his deceased brother, they fall outside that sub-section and must claim under Section 15 (1) (b) of the said Act. Without commenting any further on the merits of the amended cause of action, suffice it to say that the claim of the plaintiffs under Section 15 (1) (b) of the said Act, read with the proviso to that section, is in no way higher than the original claim under Section 15(1)(a) of the said Act, and would not prejudice the case of the defendants/petitioners.

16. The next question which arises is whether the amendment ought to have been disallowed on the ground that it is *mala fide*. In the

present case, a fundamental averment – as to the parentage of the plaintiffs/defendants – repeated in several places is sought to be explained as a typographical error. This claim is belied by a mere reading of paragraphs 6 and 11 of the original plaint:

“6. That out of the three sister only Late Smt.Kamla Sharma got married and out of the said wedlock Late Smt.Kamla Sharma two male children were born namely plaintiff No.1 and Late Sh. L.M.Bhagat.

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11. That the plaintiffs submit that now they are only LR's of the above sisters as only Late Smt. Kamla Sharma was married and out of her wedlock two male children were born, who is plaintiff No.1 and Late Sh. L.M. Bhagat (who has also expired on 22.05.2011).”

[Emphasis supplied]

The confusion is not just in the use of the word “mother” and “stepmother”, but an express averment that the plaintiff No.1 and his brother [now deceased] were born out of the wedlock of Khyali Ram Bhagat and Kamla Sharma. Paragraph Nos. 6 and 11 of the plaint, set out above, do not admit of any ambiguity. It is, therefore, difficult to imagine that the case originally led by the plaintiffs/respondents was by way of a mere inadvertence as Kamla Sharma has throughout been described as the “mother” or “grandmother” of the plaintiffs/respondents.

17. Despite the denial of any existing relationship between Kamla Sharma and the plaintiffs, in the written statement on behalf of the defendants, which would certainly have alerted the plaintiffs to any inadvertence, the plaintiffs persisted with the case even in their

replication. The contents of the written statement in response to paragraph 6 of the plaint, and the plaintiffs' replication in relation thereto in their replication, make interesting reading:

Written statement

“6. That the contents of para No.6 of the plaint as alleged are false, frivolous and denied and is not admitted as correct and the Plaintiffs be strictly called upon to prove the same. It is specifically denied that out of the three sisters only Late Kamla Sharma got married and out of the said wedlock late Kamla Sharma's two male children were born namely Plaintiff No.1 and Late Sh. L.M.Bhagat. It is submitted that that Kamla Kumari Sharma died intestate on 27.05.2009. It is further submitted that she was unmarried and died issueless. It is submitted that after death of the Ms.Kamla Kumari Sharma her 1/3rd share in the suit property devolved upon her sisters namely Sarla Kumari Sharma and Vimla Kumari Sharma, who were also the co-owners of the said suit property. It is further submitted that on 27.02.2011 Ms. Vimla Kumari Sharma died intestate leaving behind her sister Sarla Kumari Sharma as her only legal heir as she was also unmarried and died issueless. It is pertinent to mention that by virtue of intestate succession Ms. Sarla Kumari Sharma became the sole and absolute owner of the suit property. It is submitted that the suit property was also mutated in the name of Sarla Kumari Sharma. It is further submitted that Plaintiff No.1 and late Mr. Lalit Mohan Bhagat were born out of the said wedlock of Shri Khyali Ram Bhagat and Mrs. Radha Bhagat. Kamla Kumari Sharma is neither the biological mother nor the stepmother of the Plaintiff No.1 or late Mr.Lalit Mohan Bhagat as falsely alleged and claimed by the plaintiffs in

order to fulfill their ulterior motives. Contents of preliminary submissions/objections may kindly be read as part of para under reply as the contents whereof have not been repeated herein for the sake of brevity and being prolix.

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Replication

6. *That the contents of para 6 of the written statement are wrong and denied. The contents of the plaint are true and correct same may be read as a part and parcel to the present para. It is submitted that there is a typographical error, but as per law the plaintiffs are only LR's who are entitled for the present suit property.*

[Emphasis supplied]

18. It is, in these circumstances, not possible to accept the contention of the plaintiffs that their original pleadings were on account of a typographical error. The Supreme Court in *J.Samuel & Ors. vs. Gattu Mahesh & Ors.* (2012) 2 SCC 300 has explained the circumstances in which an error can be regarded as typographical:

“21. In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

22. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.”

19. It is evident from the nature of the pleadings in the replication in the present case, that the plaintiffs/respondents were now being ambiguous about the status of their relationship with Kamla Sharma. While claiming the property on the basis of inheritance, it is expected that the plaintiffs would establish the genealogy correctly and unambiguously. Learned counsel for the petitioners appears to be justified in her submission that the amendment was necessitated by the order dated 21.09.2015 passed by this Court. Having noted the divergent stands of the parties regarding the parentage of the plaintiff No.1 and his brother [now deceased], the Court directed the plaintiffs to file documents to establish their lineage and furnish the details of their parents. The affidavit to prove lineage was filed more than two years later on 10.10.2017. In that affidavit, it was stated as follows:

“3. That is correct that the Plaintiff No.1 and his brother late Lalit Mohan Bhagat were born with the wedlock of late Khayali Ram Bhagat and late Radha Sharma, Late Smt. Kamla Devi Sharma is

step mother of the plaintiff No.1 and his brother late Lalit Mohan Bhagat.

4. *That the Plaintiff No.2 to 4 are the legal heirs of late Lalit Mohan Bhagat, the late elder brother of the plaintiff No.1.*
5. *That the plaintiff No.1, the deponent and Plaintiffs No. 2 to 4 have got the Succession Certificate of the movable property in various Banks of late Kamla Devi Sharma from the Court of Ms Pooja Talwar, Administrative Civil Judge, South East District, Saket Courts, New Delhi in Succession Case No. 29 of 2014 vide order dated 21.4.2014. The certified copy of order and original Certificate have been filed.*
6. *That the plaintiffs are the legal heirs of late Smt. Kamla Devi Sharma (the step mother of Plaintiff No.1 and his brother late Lalit Mohan Bhagat) and heir to sisters Late Vimla Kumari Sharma and late Sarla Kumari Sharma.*
7. *That late Smt. Kamla Devi Sharma was expired on 27th May, 2009, late Vimla Kumari Sharma was expired on 2nd February, 2011 and late Sarla Kumari Sharma was expired on 1st October, 2014. The plaintiffs are the Successors of all the three sisters.”*

20. Further, the Trial Court's reliance on the order passed in a litigation between the plaintiffs themselves, to which neither the defendants nor any other person was party, is misplaced. The plaintiffs could not have based their case for an amendment of pleadings upon their showing that they had, in an unconnected litigation, shown Kamla Sharma to be their step-mother. The case of the plaintiffs, to that extent, was not relevant at the stage of

amendment of pleadings, when the Court is not concerned with the merits of the case to be incorporated. The application under consideration filed under Order VI Rule 17 of the CPC, was made at the same time, i.e, 10.10.2017. The conduct of the plaintiffs/respondents in this regard certainly does not inspire confidence.

21. In view of the above discussion, the question is whether plaintiffs' amendment ought to be disallowed, and the parties compelled to proceed to trial on an admittedly incorrect pleading, or whether the amendment can be allowed, but subject to terms. In this context, it is certainly possible to come to the conclusion that the original pleadings of the plaintiffs were not *bona fide*, or were reckless with regard to the fundamental question of the identity of their mother, and their relationship with the person through whom they claim title. However, that is not the same thing as to say that the amendment is *mala fide*. The question which the plaintiff now seeks to put to trial is – whether Kamla Sharma had married their father or not. Without examining the evidence on that question, it is not possible to say that this in itself is a *mala fide* pleading.

22. I have therefore come to the conclusion that the amendment deserves to be allowed, not because I am impressed with the stand taken by the plaintiffs/respondents, but because they have to be given an opportunity to establish their case, which they have sought to incorporate by way of a pre-trial amendment.

23. However, the issue of costs needs to be revisited. The Trial Court has allowed the amendment with costs of ₹5,000/- payable by

the plaintiffs to the defendants. The quantum of costs awarded by the Trial Court appears to be wholly unrealistic and merely symbolic. It is certainly not in conformity with the law laid down in the aforesaid judgment of the Supreme Court in *Revajeetu Builders and Developers* (supra).

24. The plaintiffs persevered with their admittedly misadventurous plaint for almost 3 years. The adjudication of the amendment application has taken another two years. The purpose of imposing costs, as laid down in paragraph 66 (iv) of the judgment in *Revajeetu Builders and Developers* (supra), includes sending a message that the parties have to be careful while drafting the original pleadings. This is a fit case for that message to be clearly sent. A substantial amount of costs would also, to some extent, compensate the defendants/petitioners for the expenses and inconvenience occasioned by the conduct of the plaintiffs/respondents. Keeping these factors in mind, while upholding the order of the Trial Court permitting the amendment, the amount of costs awarded against the plaintiffs is enhanced to ₹1,50,000/-.

25. By the interim order of this Court dated 16.05.2018, it was directed that further proceedings in the Trial Court may continue, subject to the decision in this petition. The plaintiffs are directed to furnish proof of payment of the balance amount of costs before the Trial Court on the next date of hearing, failing which the amendment application will be treated as dismissed, and the Trial Court shall pass appropriate directions with regard to the further proceedings in the suit.

Conclusion

26. In the facts and circumstances aforesaid, the petition is disposed of by modifying the impugned order of the Trial Court to the extent that the costs of ₹5,000/- awarded by the Trial Court are enhanced to ₹1,50,000/-. There will be no orders as to costs in this petition.

AUGUST 19, 2019
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PRATEEK JALAN, J.

