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

Date of Decision: 19th September, 2019

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CM (M) 1324/2018

G S GUPTA (DECEASED) THR LRS Petitioner

Through: Ms. Nandani Sahni and Mr. Sachin
Bandooni, Advocates. (M:
9810034205).

versus

CHET RAM GUPTA (DECEASED) THR LRS Respondent

Through: Mr. Vineet Wadhwa and Mr. Praveen
Chauhan, Advs. for R-2 (M:
9810008847).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the order dated 24th May, 2018 by which four applications under Order VI Rule 7 CPC - I.A. No. 3843/09, I.A No. 3844/09, I.A No. 8959/09 and I.A No. 8960/09, and one application under Order VI Rule 17 CPC – I.A. No. 12340/09, have been decided by the Id. Trial Court.

2. The background of the suit is that the Plaintiff before the Court - Shri Chet Ram Gupta, i.e., Respondent No.1 (*hereinafter*, “*Plaintiff*”) filed a suit against Defendant No.1/Respondent No.2 - Smt. Motian Devi Lamba (*hereinafter*, “*Defendant No. 1*”), Defendant No.2/Petitioner No.1 - Dr. G.S. Gupta (*hereinafter*, “*Defendant No.2*”), Defendant No.3/Petitioner No.2 - Shri S.P. Gupta (*hereinafter*, “*Defendant No.3*”) and Defendant No.4/Petitioner No.3 - Shri Ravi Prakash Gupta (*hereinafter*, “*Defendant No.4*”), seeking specific performance of the alleged agreement to sell dated

16th September, 1986. The suit was filed in the year 1989 and relates to property bearing No. W-73 Greater Kailash-II, New Delhi, admeasuring 1014 sq. yards. The reliefs sought in the original plaint were primarily for specific performance and other consequential reliefs.

3. The Defendants had filed the written statement along with a counterclaim seeking possession of the property. The following issues were framed in the suit on 9th November, 1994:

- “1. Whether the suit is barred by law? OPD*
- 2. Whether a valid and binding agreement to sell was executed between the plaintiff and defendant No. 1 for sale of the property in disputes? OPP*
- 3. Whether the possession of the plot was given to the plaintiff in part performance of the agreement to sell? OPP*
- 4. Whether the plaintiff was always ready and willing to perform his part of the contract? If so, its effect? OPP*
- 5. Whether the Defendant No.1 or defendant no.2 &4 were in possession of the plot upto 26th October, 1989 and whether the plaintiff has trespassed into the plot after obtaining the temporary injunction in this suit? If so, to what effect? OPD*
- 6. Whether the defendants 2 & 4 are entitled to possession of the suit property under valid Gift Deed executed by defendant No.1 in favour of defendants 2 and 4? OPD*
- 7. Whether defendants 2&4 are entitled to restoration of possession of the plot from the plaintiff? OPD*
- 8. Whether defendants 2 & 4 are entitled to recover any damages from the plaintiff as alleged in the counter claim, if so to what extent and whether the counterclaim has been made according to law? OPD*
- 9. Whether the documents dated 1.10.86 purporting to have been executed by defendant No. 1 are forged for which the plaintiff is liable to be prosecuted? OPD*

10. Whether the plaintiff by his conduct is disentitled to the relief of specific performance? OPD
11. Relief”

On 14th May, 1996, Issue No. 6 was modified as under:

“6. Whether any legal and valid Gift deed has been executed by the defendant No.1 in favour of defendant No.2 and 4 transferring the plot in their favour and if so, whether the Gist deed is binding on the plaintiff? OPD”

4. The Plaintiff thereafter filed an application for amendment of the suit. The said application was dismissed by a Id. Single Judge of this Court but later allowed in appeal by a Id. Division Bench, which order was confirmed by the Hon’ble Supreme Court on 11th August, 2008. The additional relief sought vide the amendment reads as under: -

“It may further be held that the alleged Relinquishment Deed alleged to have been executed by defendant No.1 in favour of the defendant No.2 and the alleged Gift Deed alleged to have been executed by defendant No.1 in favour of defendant No.2 and 4 with respect to the property in suit are not binding on the Plaintiff and the Plaintiff is entitled to a decree for specific performance of the Agreement to Sell against all the defendants. Defendants 2 and 4 may also be directed to join defendants 1 and 3 in the execution and registration of Sale Deed with respect to the Suit Property in favour of the Plaintiff. The cost of the suit be also awarded. Any other relief which this Hon'ble Court deems just and fit may also be awarded to the Plaintiff.”

5. On 16th September, 2009, the Plaintiff again sought amendment of the suit to add a further relief for declaration and cancellation, which is the subject matter of the impugned order. The relief sought in the application for second amendment is as under: -

“It is, therefore, most respectfully prayed that this Hon’ble Court in view of the facts and circumstances explained above may kindly be pleased to allow the present application and the amendments in Plaint in form of paras 18-B to 18-H, consequential amendment in cause of action para no. 19, consequential addition of para 21-A, dealing with valuation and court fees, verification clause and the additional prayer, may kindly be allowed to be incorporated in the Plaint as detailed in paragraph 35 of the present application. Any other or further relief considered fit may also be granted in favour of the plaintiffs.”

6. The first question is as to whether the second amendment is liable to be allowed. The Id. Trial Court has observed in the impugned order that the second amendment is essential to arrive at a decision as to the validity of the Gift Deed. This amendment was allowed by the Id. Trial Court after evidence had been concluded by the parties. Ld. counsel appearing for the Plaintiff submits that the amendment was filed prior to the evidence being recorded. If this was so, the Id. Trial Court ought to have taken a decision on the said amendment prior to recording the evidence. Having not done so, at the stage of final arguments, it is impermissible for the Id. Trial Court to allow an amendment of the Plaint in this manner. A perusal of the relief in the first amendment, which was allowed right till the Hon’ble Supreme Court, clearly shows that evidence with respect to the Gift Deed impugned by the Plaintiff has, in fact, been led to argue that the Gift Deed is illegal and inoperative. The documents and other evidence challenging the Gift Deed are already on record. The Gift Deed is therefore already the subject matter of the first amended plaint. It is submitted that the legal representatives of the original owner – Late Smt. Motian Devi Lamba, have also filed their

own suit challenging the said Gift Deed. Moreover, the issues also raise a question as to the legality of the Gift Deed. Since both the suits are tagged for evidence and are being adjudicated together, the legality of the Gift Deed would be gone into by the Id. Trial Court, in accordance with law. Thus, permitting the amendment at this stage is completely uncalled for, especially since the evidence stands concluded. Needless to add, the question as to the validity of the Gift Deed is yet to be adjudicated and decided on merits. Order in respect of application under Order 6 Rule 17 is accordingly set aside.

7. Coming to the second aspect under Order VI Rule 7 CPC, it is the case of the Plaintiff that the amendments made in the written statement are beyond the amendments to the Plaint. Id. counsel for the Defendants defends the written statements on the ground that the Hon'ble Supreme Court had permitted the Defendants to file additional written statements and not merely amended written statements. The Supreme Court had also permitted the Defendants to raise the issue of limitation.

8. The order of the Supreme Court, dated 11th August, 2008, was considered and a view was expressed thereon by a Id. Division Bench of this Court in its order dated 28th July, 2010, as under: -

“ ...

The said Order give a blanket right to the Plaintiff to amend the Plaint and give a correspondingly unfettered right to the Defendants to file additional Written Statements. It has been further clarified that the Defendants, who were Petitioners before the Hon'ble Supreme Court could also raise the issue of Limitation. Ms Nandini Sahni, learned counsel for the Respondents/Defendants draws our attention to an Order dated 7.11.2008 passed by the Learned Single

Judge which reads as follows: -

...

Only objection of the counsel for the plaintiff is that unauthorized amendments have been made in the written statement. Counsel for the defendants denies the same. Subject to the right of the plaintiff to raise the said plea at appropriate time, this application is allowed. The written statements are taken on record.?

This Order has not been appealed against. Yet the same arguments are once again being raised before us. The impugned Order, assuming that an Appeal against second Order is maintainable in spite of Order 47 Rule 7 of the Code of Civil Procedure, 1908, is not directed against the extracted Order passed on 7.11.2008. The Learned Single Judges have time and again observed that the intention of the Plaintiff appears to delay the proceedings. We are also of the same view. Trial has been fixed for 8.9.2010. We direct that no adjournment be granted in the trial. Mr Ashutosh Dubey, Advocate, has appeared before us claiming that he has a Vakalatnama in his favour executed by Mr. Maninder Singh Shah, who is alleged to be the Power of Attorney holder of Smt Motian Devi Lamba. Neither the Power of Attorney nor the Vakalatnama is before us.”

9. A perusal of the above order of the Id. Division Bench clearly shows that the question as to whether the written statements raised proper pleas and whether the said pleas were confined to the amended plaint ought to have been adjudicated at the appropriate stage. The trial court has adjudicated this after conclusion of evidence and prior to hearing final arguments. This was clearly an incorrect approach. The Plaintiff's application under Order VI Rule 7 CPC would have to be adjudicated either prior to recording of evidence or at the final stage and a comprehensive judgment would have to be passed, inasmuch as the Court would have to consider whether there were

any admissions made by the Defendants which are sought to be withdrawn in the amended plaint.

10. While there is no doubt that the amended written statements have already been taken on record, in view of the order of the Hon'ble Supreme Court and the Id. Division Bench, the order of the Id. Division Bench is clear in that the Court has to decide the question at an "appropriate time". Accordingly, the following directions are issued:

1) The amendment which has been sought by the Plaintiff is rejected and to the said extent, the Trial Court's order is set aside.

2) In so far as the view expressed by the Id. Trial Court on the applications under Order VI Rule 7 CPC are concerned, the findings of the Trial Court are set aside and the matter is remanded back to the Trial Court to finally hear the arguments on all these applications and the suit. If the Id. Trial Court is of the opinion that any particular plea taken in the written statement constitutes withdrawal of an admission made in the earlier written statement, the new plea taken in the amended written statement would be ignored - however, this would have to be adjudicated on a plea-by-plea basis and not on the written statement taken as a whole.

11. The Id. Trial Court shall accordingly hear arguments on the applications under Order VI Rule 7 CPC and both the suits, and adjudicate the issues on merits at the final stage. No separate order needs to be passed on the applications under Order VI Rule 7 CPC.

12. Considering the vintage of the suit i.e., more than 33 years old, the Id. Trial Court is directed to adjudicate the suits within a period of three months, on or before 31st December, 2019. The Id. District Judge shall

ensure that the matter is marked to the appropriate Court for final disposal. No further applications shall be entertained by the Id. Trial Court. The costs imposed are set aside.

13. The petition and all pending applications are disposed of.

14. Let a copy of this order be sent to the Ld. District Judge for compliance. *Dasti.*

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 19, 2019
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