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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 6th December, 2019
+ **CM(M) 533/2017 & CM APPL. 18142/2017**
SATISH YADAV Petitioner

Through: Mr. Vivek Kumar Chaudhary & Mr.
Mayank Goel, Advocates (M-
9810189487)

versus

BHAGWAN SINGH & ORS Respondents

Through: Ms. Surinder Kaur, Advocate for R-1
and 2

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. The present petition has been filed challenging the impugned order dated 20th January, 2017, which has rejected the Petitioner's/Plaintiff's (*hereinafter, "Plaintiff"*) application for amendment under Order VI Rule 17 CPC. The background is that a suit for specific performance, was filed by Mr. Satish Yadav in respect of agreement to sell dated 22nd March, 2010 against Mr. Bhagwan Singh and Mr. Ashish Kumar – Defendants No. 1 and 2. During the pendency of the suit, the Defendants revealed that property bearing Khasra no.29, House No.17, village Sahipur, Shalimar Bagh, Delhi-110088 has been sold to one Ms. Geeta. The Plaintiff then took steps to implead the said Ms. Geeta – the subsequent purchaser as Defendant No.3, and amendment was sought. The said amendment was allowed, however, at the stage of framing of issues, it was realised that the prayer for cancellation of the sale deed in favour of Ms. Geeta was inadvertently left out from the amended plaint. The said prayer was sought to be added by filing an application under Order VI Rule 17 CPC. Since the same was an inadvertent

error, the Plaintiff sought amendment of the prayer clause. However, since by then, the issues had been framed and the evidence had commenced, the Trial Court has rejected the application in view of the proviso to Order 6 Rule 17 CPC.

2. Ld. counsel for the Plaintiff submits that it was only due to his error that the relief could not be added in the plaint. Accordingly, it is submitted that the Plaintiff be permitted to add the relief of cancellation of the sale deed.

3. The Court has perused the application. The only amendment which is being sought to be added is in prayer clause (b), where the Plaintiff is seeking to add the following prayer:

“pass a decree for cancelling the sale deed bearing registration NO. 14986 in additional book No. 1, volume No. 4473, on page 186 to 194 dated 24.11.12 executed by defendant no. 1 in favour of defendant no. 3”

4. Considering the above-mentioned factual background, the amendment which has been sought is clearly within the scope of the earlier amended plaint, where challenge has been raised to the sale to Ms. Geeta. The amendment was made pursuant to the disclosure made in the written statement. Though the proviso to Order 6 Rule 17 is a general rule that amendments in pleadings ought not to be permitted once trial has commenced, the same is not an inflexible rule. The same has been observed by the Hon’ble Supreme Court in **Chander Kanta Bansal v. Rajinder Singh Anand**, (2008) 5 SCC 117, as follows:

“13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid

surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

5. There has been exercise of due diligence by the Plaintiff, as amendment of the Plaint was sought to implead the third party purchaser, in view of the disclosure made in the written statement. This amendment has already been allowed. The omission to seek the prayer for declaration/cancellation of the sale deed was at best an omission by the counsel for which the litigant cannot be blamed as the same does not require any new facts to be established. The relief is to be considered on the basis of the pleadings and documents on record.

6. Accordingly, the above prayer is permitted to be added subject to payment of Rs.20,000/- as costs to the Plaintiffs. Let the amended plaint be taken on record. The consequential issue be framed by the Trial Court. The trial to continue in the matter. The costs shall be paid on or before the next date before the Trial Court.

7. Petition and all pending applications are disposed of.

PRATHIBA M. SINGH

DECEMBER 06, 2019

Rahul