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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 34/2019 & CM APPL. 1082/2019**

RAKESH KUMAR Petitioner
Through: Mr. Narender Sharma, Advocate (M-9811480411)

versus

DHARMENDER KUMAR SHARMA Respondent
Through: Mr. N.K. Aggarwal, Advocate (M-9818342898)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **13.01.2020**

1. The present petition challenges the impugned order dated 13th November, 2018 by which the application under Order VI Rule 17 CPC filed by the Petitioner/Plaintiff (*hereinafter*, “*Plaintiff*”) seeking to amend the plaint has been rejected by the Trial Court. Ld. counsel for the Plaintiff submits that the initial suit was for declaration and the Plaintiff seeks to add a relief of possession in the prayer clause, and thus amendment has been sought. He submits that there was an eviction petition which was filed by the Respondent/Defendant (*hereinafter*, “*Defendant*”) which was allowed and was upheld till the Supreme Court. However, in RC.REV. 292/2016, while deciding the eviction petition, the Id. Single Judge of this Court has observed as under:

“17. A finding of a Tribunal under the Rent Control Act is not conclusive qua title and it is not as if the eviction of the petitioner on the ground of non-payment of rent would be determinative of the title of the respondent to the property which the petitioner in the civil suit is disputing. If the petitioner, in civil suit is able to get any relief, the same will prevail over the

finding of the relationship of landlord and tenant under the Rent Act.”

2. Ld. counsel submits that in view of the above finding, the question of ownership was to be decided only in the declaratory suit and not in the eviction petition. He thus prays that the relief for possession be permitted to be added.

3. On the other hand, ld. counsel for the Defendant submits that this is the third amendment application being filed by the Plaintiff and unnecessarily, delays are being caused in his own suit. The stage for filing of the amendment application is long over, as the application has been filed after the Plaintiff's evidence has been closed and at the stage of the Defendant's evidence. Further he relies upon the order dated 12th July, 2013 in which the Trial Court had clearly observed that this was a suit which had to proceed under Order XII Rule 6 CPC and accordingly, the Defendant has in fact moved an application under Order XII Rule 6 CPC, which is to be considered by the Trial Court. He further submits that several facts have been suppressed in the petition and thus the petition is liable to be dismissed.

4. The suit from which the present petition arises is one for declaration and injunction. The prayers in the suit are as under:

“a. Pass a decree of declaration in favour of the plaintiff and against the defendant thereby declaring the documents viz. Agreement and Receipt both dated 26.08.1998 allegedly executed by the plaintiff in favour of the defendant pertaining to the transfer of the property bearing No.52/40, measuring 200 sq. yards, out of Khasra No.584, situated at Gali No.6, area known as Gamri Extn., Delhi-110053, more particularly shown in Red Colour in the site plan attached, as null and void w.e.f. 26.08.1998.

b. Pass a decree of permanent injunction in favour of the

plaintiff and against the defendant thereby restraining the defendant, his agents, attorneys, legal heirs, relatives, friends, representatives, successors etc. from forcibly dispossessing the plaintiff and his family members and from creating any third party interest in the suit property bearing No.52/40, measuring 200 sq. yards, out of Khasra No.584, situated at Gali No.6, area known as Gamri Extn., Delhi-110053, more particularly shown in Red Colour in the site plan attached;

c. Award the costs of the suit in favour of the plaintiff and against the defendant;

d. Pass any other or further order/direction/relief(s) which this Hon'ble Court may deem fit and proper in the facts and circumstance of this case, in favour of the plaintiff and against the defendant, in the interest of justice.”

5. During the pendency of this suit owing to the orders passed in the eviction petition filed by the Defendant against Plaintiff, possession has been handed over by the Plaintiff to the Defendant. The observation in the order dated 9th October, 2017 passed by the Id. Single Judge deciding the Rent Control Revision is clear that the rent control proceedings would not be conclusive of title and the decision in the suit would be determinative of the title of the Plaintiff. In view of the fact that the prayers sought are for declaration and for permanent injunction from forcibly dispossessing the Plaintiff, and possession has now been handed over under orders of the Court in the eviction petition, the prayer for possession is sought to be added in the application under Order VI Rule 17 CPC.

6. While there is no doubt that this is the third application seeking amendment, and the proviso to Order VI Rule 17 CPC clearly bars the filing of an amendment application after trial has commenced, the suit itself is for declaration and if the suit is to proceed for adjudication either under Order

XII Rule 6 CPC or finally after evidence, the main issue would be as to whether the Plaintiff is the owner of the property. If the Court comes to the conclusion that the Plaintiff has ownership rights in the property, the Court cannot be prevented from passing the consequential orders for possession, since the relief of injunction has to be suitably moulded owing to the subsequent events that have taken place. Accordingly, it is clarified that if the trial Court comes to the conclusion, finally upon adjudication that the Plaintiff is entitled to a decree of declaration of ownership in respect of the suit property, the Trial Court would be empowered to pass appropriate orders for possession and mould the relief, as in such a situation, the finding of landlord-tenant would no longer be applicable.

7. The Trial Court shall proceed with the suit without any amendment in the plaint being required, however, the Trial Court would take into consideration the developments in the eviction proceedings, as also the consequential relief if the decree of declaration is being granted.

8. With these observations, the petition and all pending applications are disposed of.

9. No further applications for amendment, etc. shall be entertained by the Trial Court and no unnecessary adjournments shall be granted. The suit shall proceed expeditiously.

10. The trial court shall adjudicate the issues on merits without being affected by the observations of this Court. However, the consequential relief for possession shall be considered if the decree of declaration is being granted in favour of the Plaintiff. *Dasti.*

PRATHIBA M. SINGH, J.

JANUARY 13, 2020/Rahul