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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th February, 2020
+ **CM(M) 921/2019 and CM APPL. 27573/2019**
CHARANJEET SINGH & ANR Petitioners
Through: Mr. Rajiv Khosla, Mr. Tajinder Saluja
and Mr. Sunil Singh, Advocates.
versus
RAJ KUMAR Respondent
Through: Mrs. Seema Issar, Advocate (M:
9810260053).
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The challenge in this petition is to the order dated 20th February, 2019 by which the application under Order VI Rule 17 CPC filed by the Petitioners herein/Plaintiffs (*hereinafter* 'Plaintiffs') was rejected by the Trial Court. The primary ground on which the Trial Court had dismissed the application was that the Plaintiffs were trying to expand the scope of the subject matter of the suit by attempting to change the site plan and further, the Trial Court came to the conclusion that the Plaintiffs were trying to fill up the lacunae in the case.

2. A suit for possession and damages was filed by the Plaintiffs against the Respondent herein/Defendant - Shri. Raj Kumar (*hereinafter* 'Defendant') in respect of Municipal No. 18/18, W.E.A., Karol Bagh, New Delhi. The case of the Plaintiffs was that one portion of the *Barsati* floor was rented to the Defendant in 1979. However, the Defendant thereafter broke open the locks of the other *Barsati* room and trespassed into the said area. In effect, the Defendant took possession of the entire second floor. The

relevant paragraphs in the plaint are as under:

“4. That the defendant was inducted as a tenant in respect of a portion comprising of one room (barsati) with common user of W.C at second floor of the property bearing Municipal No.18/18, situated at W.E.A. Karol Bagh, New Delhi at the monthly rental of Rs.140/- for residential purposes by the erstwhile owner Shri Sardari Lal Kochhar way back in the Year 1979. The tenancy was created under Section 21 of the Delhi Rent Control Act after obtaining permission from the Court of Shri J.M. Malik, the then Additional Rent Controller at Delhi. An agreement in this regard was also executed between the defendant and the erstwhile owner on 5-2-1979 of creating a limited tenancy for a period of five Years. The portion let out to the defendant is shown in blue colour in the annexed site plan of the property.

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7. That the defendant, by taking advantage of the fact that the previous owners were not taking any action against the defendant for getting him evicted from the premises in dispute and also of the fact that they are not even visiting the property, broke open the locks of the other barsati room on the second floor and trespassed therein. Not only this the defendant also put in his lock at the main entry gate on the second floor and virtually dispossessed the erstwhile owners from the entire second floor portion of the property in dispute illegally. The portion in which the defendant has illegally trespassed is shown in red colour in the annexed site plan. The erstwhile owner Shri Pawan Kumar Goel came to know about this illegal act of the defendant in the second week of June,2004 when he visited the property personally.”

3. The reliefs prayed for in the suit are as under:

“15. The plaintiff, therefore prays as follows:-

(a) The suit of the plaintiff be decreed against the defendant whereby the defendant be directed to hand over the vacant and peaceful possession of one room on the second floor as shown in red colour in the annexed site plan forming part of property bearing Municipal No.18/18, Karol Bagh, New Delhi.

(b) The damages for use and occupation of the room in dispute be ascertained and adjudicated upon in accordance with law and a decree for recovery of the said amount may be passed in favour of the plaintiffs and against the defendant with effect from 1-12-2008 till the date of handing over of possession of the room in dispute.

(c) Costs of the suit be awarded to the plaintiffs and against the defendant.

(d) Any other, further or alternative relief for which the plaintiffs may be found entitled for in the circumstances of the case may also be awarded to the plaintiff and against the defendant.”

4. Along with the plaint, the Plaintiffs had attached a site plan in which one portion was coloured in red and the other portion was coloured in blue. During the trial of the suit and even before that, the Plaintiffs realised that the site plan contained a mistake i.e. the original tenanted portion on the southern side which was to be coloured in blue was inadvertently coloured in red and *vice versa* for the portion that had been allegedly trespassed upon. A new site plan was proposed to be filed by the Plaintiffs along with the application for amendment. The Plaintiffs' evidence had concluded by then and the Defendant opposed the amendment being granted, leading to the impugned judgment.

5. The submissions of Id. counsel for the Plaintiffs is that the pleadings in the plaint and the prayer are clear - that the southern portion was the original tenanted portion and the northern portion was the portion for which the suit for possession related to. However, while wording the relief and marking the site plan, the possession was prayed in respect of the red coloured portion of the property and inadvertently in the site plan the tenanted portion was marked in red. To explain and correct this, the application under Order VI Rule 17 CPC was filed, which was wrongly rejected by the Trial Court. According to Id. counsel, the Plaintiffs were not trying to set up a new case but merely trying to correct an error.

6. In the written statement, the Defendant took the stand that both the portions of the second floor have in fact been tenanted to the Defendant.

Paragraph 3 of the written statement reads as under:

“3. That the plaintiffs are neither the, owner nor the landlord qua the portion on the 2nd floor in possession of the defendant and as such the plaintiffs are not entitled for any relief and the present suit of the plaintiffs is liable to be dismissed.

That in fact the defendant was inducted as a tenant on a 2nd floor comprising of Barsati floor on both the sides as shown in the site plan attached and the defendant is in occupation and possession of the above said Barsati on the 2nd floor on the Southern side of the property built on Plot No. 18 Khasra No. 768/767 measuring 284.84 sq. yds in Block No. 18 situated at Southern Region of Western Extension Area, Karol Bagh, New Delhi within the limits of Municipal Corporation of Delhi since the year 1979 and in the month of September, 2000 also acquired the second portion of the Barsati on the 2nd floor from Shri Rahul Kochar, S/o Shri R.K. Kochar @ Rs.140/- per month and since then the defendant is also enjoying the said

second floor of the premises No. 18/18, West Extension Area, Karol Bagh, New Delhi and is in continuous possession of the same without any hindrance from any body and is residing in the said property with his family members. The premises are more clearly shown in the site plan attached.

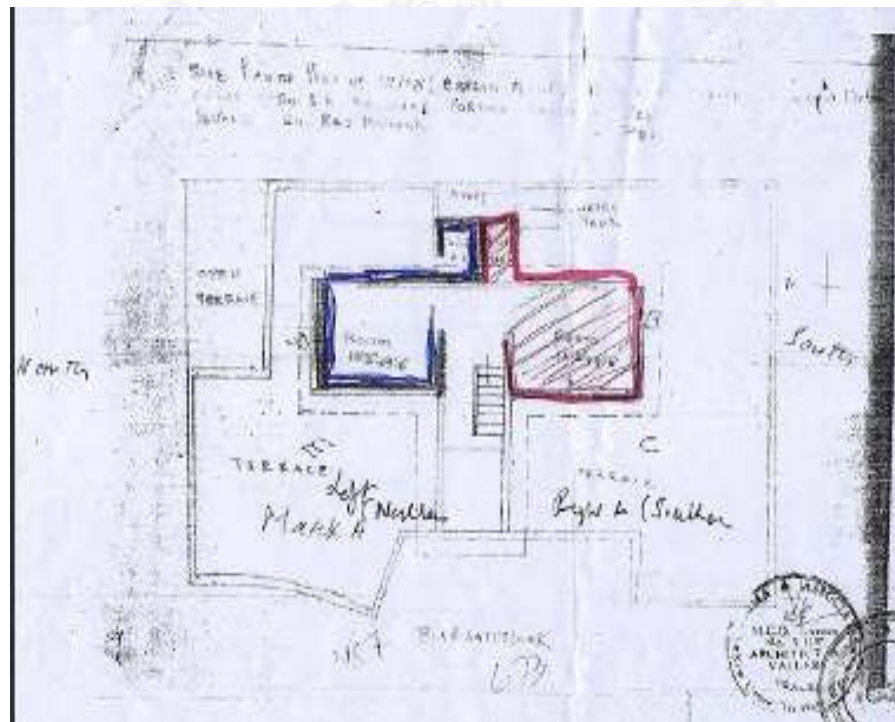
That the defendant since the year 1979 was in possession of Barsati and other accommodation on 2nd floor at the monthly rent of Rs.140/- per month including kitchen, toilet and bathroom and is residing with his family members and the defendant used to pay upto date rent to its owner Shri Sardari Lal Kochar and after his death on 06.08.1986, the rent was being paid to the legal heirs of Shri Sardari Lal Kochar. The wife of Shri Sardari Lal Kochar, Smt. Sumitra Devi had also expired on 11.12.2000. The defendant had paid the rent for the period from 01.04.1995 to 31.08.1997 by cheque bearing No. 361740 dated 21.11.1997 for Rs.5,040/- drawn on Punjab National Bank, Karol Bagh, New Delhi and the said amount was duly received by Shri R.K. Kochar one of the, sons of late Shri Sardari Lal Kochar and as such there is no relationship of landlord and tenant between the parties and the suit of the plaintiffs is liable to be dismissed.”

7. Ld. counsel appearing for the Defendant-tenant submits that the suit was writ large with inaccuracies right from inception. It is the case of the Defendant that both portions were tenanted to the Defendant and hence the suit for possession itself was not maintainable. The Defendant had pointed out right in the beginning itself, that the southern portion was under its tenancy, however, the Plaintiffs took no steps in respect thereof. Thus, at this stage, when the evidence is closed, the amendment cannot be permitted.

8. The Court has perused the pleadings of the parties. A perusal of the plaint and the written statement shows that there is no ambiguity as to which

was the originally tenanted premises. The case of the Plaintiffs is that one portion was tenanted and the other portion was illegally occupied. The Defendant's stand in the written statement is clear and categorical to the effect that one portion was tenanted in 1979 and the second portion was tenanted in 2000. Neither of the parties have a doubt as to which was the tenanted portion. It was the southern portion which was tenanted. The dispute primarily is in respect of the northern portion which according to the Plaintiffs, was trespassed into and according to the Defendant, was tenanted.

9. The site plan annexed with the plaint is as under:



10. It is in this site plan that the colouring has been reversed i.e. the blue ought to have been red and the red ought to have been blue. In the amendment application, a fresh site plant was attached which showed not only the proper colours for the portion for which possession was sought but also the fact that further tin shed rooms have been constructed/put up by the

tenant. The fact that these tin shed rooms exist now on the *barsati* floor is not even disputed by the Defendant. The issue as to whether the Plaintiff is entitled to possession of the non-tenanted portion of the *barsati* floor would have to be adjudicated in the suit. The pleading in paragraph 4 of the plaint is clear that the let-out portion is the blue portion. The prayer would thus have to be construed in this context and has to be read with paragraph 4 of the plaint. The prayer in the suit seeks possession of the red portion in the property - meaning thereby, the entire portion except the portion in blue which was let out to the Defendant. The Defendant cannot take advantage of the lack of clarity in the wording of the prayer when the narration in the plaint is clear. Ld. counsel for the Defendant has tried to argue that the tin sheds cannot be within the scope of this suit. This submission is not accepted by this Court inasmuch as the prayer (a) in the plaint would have to mean that the Plaintiff is seeking possession of the entire portion of the property which was not let-out and which was to be in blue colour as per paragraph 4 of the plaint. The question as to whether the Defendant has any rights in respect of the untenanted portion of the suit property or not, would have to be adjudicated in the suit but there cannot be any doubt as to what constitutes the portion of the premises for which the Plaintiff is seeking relief. If the Defendant is permitted to take advantage of a colouring error in the map, it would lead to complete injustice. The Plaintiff's suit itself would be set at naught and lead to further proceedings being filed by the Plaintiff which cannot be the consequence of an error, especially in a suit which was instituted way back in 2008.

11. In a similar situation, in *Nazir Hussain v. Neeta Goel & Ors.*, [CM(M) 946/2009, decided on 22nd February, 2010] a ld. Single Judge of

this Court had held that change of the site plan due to inadvertent error would not result in changing the nature of the suit. The observation of the Court is as under:

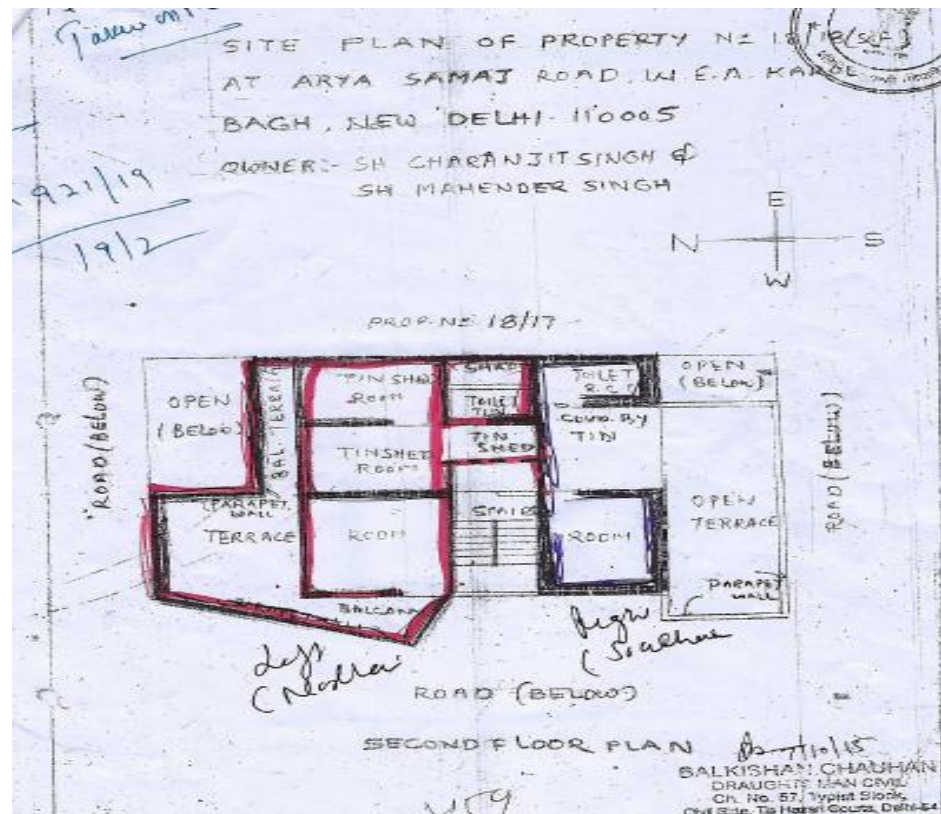
“4. The trial Court seems to be unaware of manner of numbering given in Old Delhi areas. In most of the Old Delhi areas a cluster of number is given to the properties and the properties are referred by this cluster of numbers. The amended site plan which the petitioner placed on record of the trial Court would have made it clear to the trial Court that the petitioner had not changed the site plan but he only mentioned the amended number of the properties on the top, remaining site plan was as it was. It is also not the case that the petitioner had moved an application under Order 6 Rule 17 CPC at belated stage. The petitioner had a right to rectify the plaint if the property number was inadvertently or due to lack of knowledge not correctly stated. The amendment was not going to affect the respondent in any manner or to cause any prejudice to the respondent in any manner.

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5. The trial Court wrongly disallowed the application of the petitioner. It must be remembered that one of the purposes of amendment application is to prevent multifarious litigations. It was not advisable for the petitioner to file another suit in respect of same premises giving different numbers and the petitioner correctly approached the Court with amendment application. The petition is allowed. The order dated 19th March, 2009 of the trial Court is set aside. The amendment application of the petitioner stands allowed.”

12. Under these circumstances, the site plan which has been handed across today which is coloured in blue for the southern portion i.e., the tenanted portion and coloured in red colour for the northern portion, is

taken on record. The same is extracted herein below:



13. The relief in the suit shall thus be in respect of the red coloured portion in the site plan extracted in paragraph 12 above, so that there is no ambiguity. This would ensure that there is no multiplicity of proceedings and parties are not set back in time for more than 13 years. The trial court ought to have decided the amendment application before the evidence concluded in the matter. By not doing so, the trial court has complicated the matter unnecessarily. If the amendment was considered and adjudicated prior to conclusion of evidence, parties could have taken such steps as may have been required to safeguard or defend their positions. However, that by itself does not mean that the error cannot be corrected especially because the amendment application was filed, prior to conclusion of evidence. In order to ensure that substantive justice is done in terms of the pleaded case of the

Plaintiff in the plaint, the inadvertent error in the prayer ought to be permitted to be corrected. Accordingly, the new site plan is taken on record subject to payment of Rs.50,000/- as costs to be paid by the Plaintiffs to the Defendant. The costs to be paid on or before the next date before the Trial Court. No further amendments are being permitted except the site plan being taken on record.

14. The impugned order stands modified to the above effect. If either party wishes to lead any evidence in respect of this plan, they are permitted to approach the trial court for appropriate orders. Petition and all pending applications are disposed of. The trial court shall endeavour to dispose of the suit expeditiously and not grant any unnecessary adjournments to either party.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 19, 2020

MR/A.S.

(corrected and released on 4th March, 2020)