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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th January, 2020
+ **CM(M) 701/2018 & CM APPL. 24607/2018**
NARESH KUMAR Petitioner
Through: Mr. Ratnesh Bansal, Advocate (M-9810713582)

versus

MEER SINGH (DEAD) THR LRS Respondent
Through: Mr. Rajiv Garg, Mr. Ashish Garg &
Mr. L.S. Rana, Advocates (M-9810002830)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 23rd May, 2018 by which the application under Order VI Rule 17 CPC seeking amendment in the written statement has been rejected by the Trial Court. The suit has had a long and chequered history. The suit was filed for specific performance in 2005 and Mr. Naresh Kumar – the Petitioner herein/Defendant (*hereinafter* ‘Defendant’) and Ms. Raj Rani filed applications for impleadment in 2006. The said applications were initially dismissed. However, the Id. Division Bench vide order dated 28th November, 2012 allowed the impleadment in the following terms:

“1. R-1 Meer Singh is the plaintiff of CS(OS) No. 831/2006 and the defendant thereof is R-2 Amar Singh. Subject matter of the suit is an agreement dated 26.11.2005 pertaining to 18 bigha and 8 biswa land in village Garhi, Randhala. Needless to state, Meer Singh

alleges in the plaint that Amar Singh is the recorded bhoomidar of the lands and vide agreement to sell dated 26.11.2005 has agreed to sell the land (subject matter of the agreement) to him at the sale price disclosed in the agreement.

2. Amar Singh defends the suit on various pleas and one of which is that his son Naresh Kumar and Raj Rani i.e. the two appellants are behind the suit. He alleges various disputes between himself and his son and Raj Rani.

3. Naresh Kumar and Raj Rani sought impleadment in the suit for specific performance filed by Meer Singh and vide impugned order dated 7.1.2010 the applications have been dismissed holding that a suit seeking specific performance cannot be converted into a title suit for the reason Naresh Kumar and Raj Rani claim that under a partition part of the suit land came under their bhoomidari rights.

4. The learned Single Judge is correct in the view taken, but this would mean that if Meer Singh obtains a decree for specific performance against Amar Singh, in execution thereof, required to be put in possession, he would have to litigate at the stage of execution with the appellants and since in any case a title dispute would have to be fought, learned counsel for the parties state that without prejudice to the respective stands, the appeals may be disposed of with consent, setting aside the impugned order dated 7.1.2010 and permitting impleadment by Naresh Kumar and Raj Rani but upon the express assurance and thus binding the appellants to the same, that only issue pertaining to their alleged title based upon the alleged compromise would be settled and thus in the written statement which they would file, the only ground for avoidance of the agreement to sell would be pleaded qua their share in the subject property and as per the alleged compromise.

5. Making it clear that the impugned order has been set

aside with consent. binding the appellants to the consent as above noted qua the stand which they would adopt in the written statement which they would file, the appeals stand disposed of allowing impleadment of the appellants as defendants No.2 and 3 in the suit filed by Meer Singh against Amar Singh i.e. CS(OS) No.831/2006.”

2. As per the above order, a limited right was given to the Petitioner herein who was one of the persons seeking impleadment to file a written statement and to participate in the proceedings. However, it appears from the events that have transpired that the Petitioner filed a written statement which was according to the Respondent/Plaintiff beyond the directions of the Id. Division Bench. The same was rejected initially but was thereafter allowed by the Division Bench, finally culminating in an order dated 2nd February, 2015 passed by the Supreme Court. Thus, between 2012 when the initial written statement was directed to be filed till 2015, a three-year delay was caused by the Petitioner herein in filing the written statement.

3. Thereafter, the suit was transferred to the District Court and additional issues were framed. The Plaintiff filed its affidavits by way of evidence and a Local Commissioner was appointed for recording the evidence. An application under Order VI Rule 17 CPC was then filed by Mr. Naresh Kumar at the time when the Plaintiff's evidence had commenced. The same was rejected by the Trial Court. The said order dated 23rd May, 2018 rejecting the application for amendment is under challenge before this Court.

4. Id. counsel for the Petitioner seeks to urge that the amendment which has been sought now had arisen because some questions were not permitted to be put to the Plaintiff's witness in cross-examination. The Id. counsel has

taken the Court through the application under Order VI Rule 17 CPC to impress upon the Court the manner in which knowledge was acquired by the Plaintiff of the share of the Petitioner/Defendant, by way of the amendment. It is thus prayed that the Defendant does not wish to recall any of the Plaintiff's witnesses but should be allowed to lead evidence on the basis of the facts now sought to be included in the written statement.

5. On the other hand, Id. counsel for the Plaintiff vehemently opposes the application for amendment being allowed. The Id. counsel has relied upon the considerable delay that has been caused by the Defendant in this matter since inception to submit that the adjudication of the suit is indefinitely delayed. It is further submitted that at the time when the initial interim order was passed, the entire sale consideration as per the agreement to sell is lying deposited and till date, the Plaintiff is unable to enjoy the fruits of the purchase of the property by the Plaintiff.

6. The suit is more than 15 years old. The Court has perused the various orders passed at different stages by the Id. Single Judge, Id. Division Bench and the Hon'ble Supreme Court. There is no doubt that initially the Defendant was given a restricted right to file a written statement and the written statement which was filed was beyond the liberty given by this Court. That led to considerable delay in the matter. The evidence has commenced in 2017 by the Plaintiff and has in fact concluded as of 7th September, 2018. Though the application for amendment was filed in 2017, it seems to have been urged and pressed only after the cross-examination of the Plaintiff's witnesses has concluded, as the submission even today is that some of the questions were disallowed in cross-examination and hence the amendment ought to be allowed.

7. The initial order of the Id. Division Bench dated 28th November, 2012 is clear and categorical that only a limited is being given to the Petitioner/Defendant to file the written statement. The written statement being sought to be amended now is not only a hopelessly barred but is also beyond the liberty which was initially granted. The Trial Court has therefore rightly dismissed the application for amendment. After the conclusion of the Plaintiff's evidence, such an amendment cannot be permitted in view of the proviso to Order VI Rule 17 CPC.

8. In view of the fact that the evidence on behalf of the Plaintiff is already concluded and keeping in mind the fact that the suit is of 2005, it is directed that recordal of evidence of the Petitioner/Defendant shall now be concluded on or before 30th April, 2020. The adjudication of the suit shall be concluded within four months thereafter. The present petition is dismissed with Rs.10,000/- costs to be paid to the Plaintiff on or before next date.

9. The Trial Court shall ensure that no further applications are entertained which derail the trial and the timelines set out above are adhered to.

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

11. A copy of this order be given *dasti* under signatures of the Court Master.

PRATHIBA M. SINGH
JUDGE

JANUARY 28, 2020
Rahul