

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

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Reserved on: 20th July, 2021

Pronounced on: 18th August, 2021

+ **CM (M) 454/2021, CM APPL.21392/2021 (by the petitioner u/S 151 CPC for stay)**

SHIVANI MITTAL

.....Petitioner

Through: Mr. Vikas Aggarwal, Advocate

Versus

INDU GUPTA

.....Respondent

Through: Mr. Kuljeet Rawal & Mr. Vikram
Alung, Advocates

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. This petition under Article 227 of the Constitution of India has been filed by the defendant before the learned Trial Court against the order dated 10th March, 2021, whereby, the application moved by the petitioner under Order VI Rule 17 CPC was dismissed.

2. Mr. Vikas Aggarwal, learned counsel for the petitioner, submitted that the impugned order does not consider whether the amendments sought were necessary for the just disposal of the case. It was submitted

that the pleas were not available to the petitioner till the decision of this Court in *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, where the court held that the husband was a necessary party to any suit filed by his parents in respect of the property in which the estranged wife was residing.

3. Reliance has been placed by learned counsel for the petitioner on the judgment of the Supreme Court in *Revajeetu Builders & Developers v. Narayanaswamy & Sons*, (2009) 10 SCC 84, to submit that the amendments sought by the petitioner were those of the nature that were to be allowed. It was also submitted that issues have not been framed so far and that trial has not commenced. It was also submitted that amendments were also with reference to the claim of the respondent that she had become the absolute owner of the suit property on account of a gift deed, but in fact there was only a Deed of declaration, and therefore, the petitioner had sought to challenge the claim of absolute ownership set up by the respondent. It was further submitted that the merits of the averments or the evidentiary value of the documents sought to be brought on record by the petitioner, were not to be considered at the time when the court was only considering the application seeking amendment. The learned counsel also pointed out that an application under Order I Rule 10 CPC was also pending, whereby the petitioner had sought the impleadment of the husband in the suit. The amendment sought was also to incorporate the pleas relating to the husband. Thus, it was prayed that the amendment be allowed.

4. Mr. Kuljeet Rawal, learned counsel for the respondent, submitted

that the suit was one for possession filed by the Mother-in-law against her daughter -in-law. Certain defenses have been taken by the petitioner in the written statement filed way back in October, 2019. The respondent was relying on a registered gift deed which the petitioner could not challenge. Based on the judgment of this court in ***S.R. Batra and Anr. Vs Tarun Batra***, (2007) 3 SCC 169, when an application had been moved by the respondent under Order XXXIX Rules 1 & 2 CPC, for provision of an alternate residence to the petitioner, the present application for amendment was moved. Thus it was submitted that the application was *malafide* and was rightly dismissed.

5. The Supreme Court in ***Revajeetu Builders (supra)*** had discussed in detail as to the factors that need to be taken into consideration while dealing with an application for amendments. These have been set out in para 63 as under :

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

6. The impugned order reflects that the learned Trial Court has not applied its mind to consider the need for the amendments sought. The learned court noted that an application under Order I Rule 10 CPC to implead Ankit Gupta, husband of the petitioner, was yet to be disposed off and observed that it would be considered in the light of the liability of Ankit Gupta in providing an alternate residence to the petitioner. Yet, it has disallowed the petitioner from incorporating pleas regarding her husband. Therefore, the learned Trial Court overlooked the fact that the amendment sought was imperative for proper and effective adjudication of the case, listed by the Supreme Court as a factor to be kept in mind.

7. Whether the amendments were prompted by *malafides* is an aspect the learned Trial Court seems unsure of. It found that delay was not reflective of *malafide* as the application was filed before settlement of issues, but opined that the amendments could have been moved sooner as the consideration of another application under Order XII Rule 6 CPC was being “derailed”, quite overlooking the fact that even during the pendency of the said application of the plaintiff, she had herself moved the application under Order XXXIX Rules 1 & 2 CPC. Thus no *malafides*

can be read into the moving of the application for amendments to the written statement.

8. The learned Trial Court did not find that the amendments fundamentally changed the case set up by the petitioner. However, it assessed the effect of the plea regarding the document not being a Gift Deed but a Deed of Declaration to hold that since none had challenged the gift, this plea would unnecessarily “extrapolate the controversy”. The learned Trial Court has also foreclosed the right of the petitioner to challenge the gift deed as it was executed “much prior to her marriage”. Reference to Section 116 of the Indian Evidence Act, 1872 was also made by the learned Trial Court.

9. The impugned order has thus rendered the petitioner without any right to raise any defence. Without either party leading evidence a final declaration of the status of the petitioner as a “licencee” has been given though the petitioner has claimed even in the unamended written statement, copy of which, has been placed on the electronic file as Annexure P-3, that the premises was her matrimonial home and had raised pleas regarding the property being an ancestral property/joint family property where her husband Ankit Gupta had an undivided 1/4th share.

10. The amendments sought were to incorporate the following pleas :

“4. (A) The defendant seeks leave of this Hon’ble court to add the following para (f) after para (e) in preliminary objection 1 of the written statement.

“(f) That without admitting and without prejudice to the rights and contentions of the defendant, it is submitted that the plaintiff has also concealed the fact the husband of the plaintiff has mother, one brother and two sisters. Since the plaintiff was well aware that there is an embargo on her title, therefore she got a Deed of declaration signed and registered as document No.1582 in Book No.IV, Vol No.392 on pages 87 to 90 with the Sub-Registrar V-A, New Delhi. This shows that the alleged Gift deed allegedly executed by her father in law has not confer any title in favour of the plaintiff.”

(B) That after the Para 7 of the preliminary objection, the following para 7A may kindly be allowed to be incorporated.

“7A. That the suit of the plaintiff is liable to be rejected on the ground of the Non-Joiner of the necessary party. The defendant has been staying in the property in question as her shared household and had been living with her husband and her parents i.e. the plaintiff and her husband. At the time of the marriage of the defendant, the brother-in-law of the defendant was staying away from the property on the rented accommodation. The rent of the rented accommodation used to be paid from the joint family income of the plaintiff and her husband as the brother in law of the defendant has no separate business except with the joint business of the father and sons. Even the plaintiff and her husband had in the Bio-data of their son Ankit Gupta, had the details of the Maternal Grandfather, her entire family including their sisters, brothers and did not specify the separate business of Ankit Gupta, since it was informed that all the business are joint family business and the property in question is also as part of the joint family. Hence in these circumstances, it is very clear that there is connivance with the plaintiff and the husband of the defendant Shri Ankit Gupta and therefore it is essential for the proper adjudication of the present dispute that the husband Ankit Gupta may be impleaded

as the necessary party without which the plaint is liable to be rejected under Order I Rule 10 CPC.”

(C) That the following para may be added in Para 16 of the Para wise reply after the last line of this para.

“The plaintiff is clearly making a false assertion in the court that the defendant removed the substantive, goods and all assets, jewelry, accessories movable of her belongings. It is clear from the facts that the defendant has still lying the following items in the property in question such as Washing Machine, Grinder Mixer, Steam Press, Water Dispenser, Three Storage Almirah, Suitcases, Dinner sets, beddings including Quilts, Blankets, bedsheets, bedcovers, Dohars, Artifacts like lamps, Vases, candle stand. Even the Jewellery both, Diamond and Gold Jewelry, Gold coins, and silver items such as utensils, suparedaan, 6 silver glasses, bowls, idols of Lakshmi Ganesha and one big Hatri and also clothes of defendant in the same way as it use to be since the time the defendant came to her matrimonial home. Hence the defendant is making a wrong averments.”

(D) That the following para may be added in Para 20 of the Para wise reply after the last line of this para.

“That the plaintiff and her has concealed the facts from this Hon’ble court that she is a business women and has been doing the money transaction in millions from her business while the other businesses of her husband, and both sons have no business. The plaintiff has not purposely shown the business income of her husband and both the sons. Even the plaintiff had failed to show the purpose of taking the loan from the bank. In this regard the plaintiff may be directed to disclose all the bank details of the plaintiff, her husband, and her two sons namely Rachit Gupta and Ankit Gupta.”

11. It is clear that these amendments do not seem to change the defence

raised by the petitioner. Neither do the amendments sought cause prejudice to the respondent in any manner as she has already been put on notice through the written statement already filed, that the defence raised against her claim by the petitioner is that the property was joint family property and her right of residence stems from the premises constituting her matrimonial home.

12. The learned Trial Court having completely mis-directed itself in considering the application under Order VI Rule 17 CPC, impugned order dated 10th March, 2021 is liable to be and is set aside. The petition is allowed and the pending application is disposed of. The application under Order VI Rule 17 CPC is allowed. The petitioner is permitted to carry out the amendments, as prayed for, and file the amended written statement, within two weeks, from the date of this order.

13. In view of the fact that the petitioner is the daughter-in-law of the respondent and is also enjoying the protection order granted to her by the Metropolitan Magistrate under Section 19 of the Domestic Violence Act, 2005, there is no order as to costs.

14. Copy of this order be sent electronically to the learned Trial Court for information.

15. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 18, 2021/ck