



\$~14(Appellate)

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

+ **CM(M) 327/2022 & CM No. 17410/2022**

SH. MANORANJAN SINGH BHOGAL & ORS..... Petitioners

Through: Ms.Sonam Anand and
Ms.Deepshikha Sansanwal, Advs.

versus

MS.SIMRAN KAUR BHOGAL & ANR. Respondents

Through: Mr.Lovkesh Sawhney, Sr. Adv.
with Mr.Durgesh Kumar Pandey,
Mr.Deepak Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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28.04.2022

1. The petitioners are aggrieved by the allowing, by the learned Senior Civil Judge (South) Saket Courts, New Delhi ("the learned SCJ"), of an application filed by the respondents, who were the petitioners in the proceedings before the learned SCJ, under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC).

2. For the purposes of the present order, suffice it to note that CS 83478/2016 was filed by the respondents-plaintiffs, against the petitioners-defendants, seeking a declaration that the petitioners in the present petition were the defendants in CS 83478/2016, and the respondents herein were the plaintiffs in the said suit. For ease of reference, the petitioners and respondents would be collectively referred to as Manoranjan etc. and Simran etc. respectively.



3. Simran etc. filed CS 83478/2016, seeking a declaration that they were the legal heirs of Smt. Joginder Kaur and Shri Amarjeet Singh along with Manoranjan etc. and on that basis, seeking a restraint against Manoranjan etc. from creating any third party right in the suit property.

4. During the pendency of the proceedings, Simran etc. moved an application under Order VI Rule 17 of the CPC to amend the prayer in the plaint and alter the recitals therein. The amendment in the prayer clause in the plaint, effectively converted the plaint from one seeking declaration to one seeking partition.

5. Manoranjan etc. resisted the application on the ground that it effectively altered the entire nature of the plaint and was beyond the permissible limits of amendment as envisaged under Order VI Rule 17 of the CPC.

6. The application of Simran etc. under Order VI Rule 17 of the CPC was dismissed by the learned SCJ *vide* order dated 7th September, 2015. Simran etc. challenged the said order before this Court by way of CM(M) 1189/2015. By order dated 9th March, 2017, this Court disposed of the said CM(M) 1189/2015. The plea that the amendments changed the nature of the suit was rejected by this Court holding that there was no change in the nature of the suit. However, the Court held that, as nearly every paragraph of the suit had been amended, it amounted virtually to the filing of entirely a new suit, which could not



be permitted under Order VI Rule 17 of the CPC. For this purpose, this Court relied on its earlier decision in *Arvind Garg v. Neeta Singhal*¹. Simran etc. were, therefore, granted liberty to file a fresh application under Order VI Rule 17 of the CPC, keeping in view the observations contained in the order dated March, 2017, passed by this Court.

7. Simran etc., accordingly, filed a fresh application, which stands allowed by the learned SCJ by the present impugned order dated 26th October, 2021.

8. A reading of the application, presently, filed by Simran etc., for amending the plaint, reveals that almost fifty paragraphs of the plaint have been sought to be changed. Despite this, and despite the observations contained in the order dated 9th March, 2017, passed by this Court in CM(M) 1189/2015, as to the permissibility of such wholesale amendments under Order VI Rule 17 of the CPC, the learned SCJ has merely allowed the amendments on the sole ground that the amendments were necessary for a just adjudication of the matter and to prevent multiplicity of proceedings. Consequent to allowing the amendments, the learned SCJ has returned the plaint on the ground that the plaint as amended is beyond her pecuniary jurisdiction.

9. This reasoning, *prima facie*, is entirely insufficient as a ground to allow the application under Order VI Rule 17 of the CPC.

¹ ILR (2014) 1 Delhi 334



10. Given the observations contained in the order dated 9th March, 2017 passed by this Court in CM(M) 1189/2015, I am of the opinion that the reasons provided by the learned SCJ in the impugned order dated 26th October, 2021, for allowing the amendments as proposed in the plaint filed by the plaintiff, are insufficiently.

11. It is made clear that this Court is not expressing any opinion on the merits of the application filed by the plaintiff under Order VI Rule 17 or as to whether the amendments as proposed ought to have been allowed or not. The court is merely inclined to interfere in view of the want of sufficient reasons in the impugned order dated 26th October, 2017, for allowing the amendments as proposed.

12. As such, the impugned order, to the extent it allows the application of the plaintiff-respondent under Order VI Rule 17, set aside and the application remanded to the learned SCJ for reconsideration afresh. It is open to the learned SCJ to take any view in the matter either by way of allowing or disallowing the amendments in whole or in part. The learned SCJ is, however, directed to pass a sufficiently reasoned order on the application especially in view of the extensive and detailed nature of the amendments which have been sought.

13. CS SCJ 83478/2016, in which the impugned order had been passed, now stands transferred to this Court consequent to the impugned order. It is stated to have been renumbered as CS(OS)



219/2022. In view of the order passed today, this file would have to be sent back to the learned SCJ. Accordingly, the Registry is directed to transmit the file of CS(OS) 219/2022 to the court of learned SCJ where it would be renumbered so that the order passed today could be complied with.

14. Learned Counsel for the parties are directed to appear before the learned SCJ on 20th May, 2022. The learned SCJ is requested to decide the application under Order VI Rule 17 as expeditiously as possible.

15. Insofar as the decision of the learned SCJ in the impugned order dated 26th October, 2021, on the application of the respondent under Order I Rule 10 of the CPC, is concerned, learned Counsel for the petitioner submits that the order in respect of the said application would also require to be reconsidered in view of the order passed today, whereas learned Senior Counsel for the respondent opposes this submission and submits that irrespective of the fate of the application under Order VI Rule 17, there is no infirmity in the decision of the learned SCJ insofar as the decision to allow the application under Order I Rule 10 CPC is concerned.

16. Both parties are permitted to raise this issue before the learned SCJ consequent on the decision to be taken by the learned SCJ *de novo* on the application under Order VI Rule 17. It would be for the learned SCJ to decide whether, in view of the decision he/she takes now, the learned SCJ would require to revisit the decision on the



application under Order I Rule 10. This Court does not express any view thereon.

17. With the aforesaid observations, this petition is disposed of.

C.HARI SHANKAR, J

APRIL 28, 2022/kr/2

HIGH COURT OF DELHI



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