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

% *Date of Decision: 15th December, 2023*

+ **CM(M) 102/2018 & CM APPL. 2887/2018**

SUNIL KUMAR GUPTA & ANR Petitioners
Through: Mr. Vikas Sharma, Advocate

versus

PUSHPA JAIN Respondent
Through: Mr. R.K. Jain, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 13.04.2017 passed by JSCC-cum-ASCJ-cum Gudn. Judge, North, Rohini Courts, Delhi ('Trial Court') in CS No. 536489/2016, titled as **Pushpa Jain v. Sunil Gupta**, whereby, an application filed by the Petitioners i.e., defendants under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC') was disposed of by partially allowing some of the amendments sought. The Petitioner is aggrieved by the order of the Trial Court to the extent it disallows some of the proposed amendments.

1.1. In this judgment, the parties are referred to by their original rank and status before the Trial Court.

1.2. The Petitioners are defendant Nos. 1 and 2 respectively. The sole Respondent is the plaintiff before the Trial Court.



1.3. The Respondent is the maternal grandmother of the Petitioners herein. The Petitioners are sons of Smt. Renu Gupta, who is alive but not a party to these proceedings (including the suit before the Trial Court).

1.4. The plaintiff has filed a suit for recovery of possession, amount to the tune of Rs. 1,44,000/-, mesne profit and permanent injunction on 23.11.2015. The said suit has been filed by the plaintiff through her Authorised Representative ('AR') Sh. Ashoka Jain.

1.5. The written statement was filed by the defendants i.e., the Petitioners herein on 20.02.2016 contending that the suit property has been orally gifted to their mother Smt. Renu Gupta by plaintiff and her husband i.e., Sh. K.C. Jain.

1.6. Thereafter on 15.12.2016, an application under Order VI Rule 17 CPC was filed by the defendants for amending the written statement by incorporating proposed preliminary objection nos. 10 to 17.

1.7. The Trial Court vide the impugned order allowed the proposed preliminary objection nos. 16 and 17 to be taken on record. However, the Trial Court declined to allow the rest of the proposed preliminary objection nos. 10 to 15 on the ground that the pleas taken in said proposed preliminary objections are only available to Smt. Renu Gupta (a non-party) and not to the defendants.

Arguments of the Petitioners i.e., defendant nos. 1 and 2

2. The learned counsel for the Petitioners states that the written statement was initially filed by the defendants i.e., the Petitioners herein on 20.02.2016.

2.1. He states that thereafter, there was a change of counsel and the newly engaged counsel upon a perusal of the written statement advised them to



file the application under Order VI Rule 17 CPC for amendment of the written statement and incorporation of further defences as proposed preliminary objection Nos. 10 to 17 in the said written statement.

2.2. He states that the Trial Court by its impugned order has permitted the proposed preliminary objection Nos. 16 and 17 to be incorporated in the written statement.

2.3. He states that in this petition, the defendants are aggrieved by the rejection of their prayer for including the proposed preliminary objection Nos. 10 to 15 in the written statement.

2.4. He relies upon the judgement of the Supreme Court in ***Usha Balashaheb Swami v. Kiran Appaso Swami, (2007) 5 SCC 602***, to contend that in the written statement, the defendants are entitled to raise inconsistent pleas and the principles governing the amendment of written statement are to be liberally applied by the Courts.

Arguments of the Respondent i.e., the plaintiff

3. In reply, learned counsel for the Respondent i.e., the plaintiff states that the application under Order VI Rule 17 CPC has been filed by the defendants to delay the adjudication of the plaintiff's application filed under Order XII Rule 6 CPC.

3.1. He states that the plaintiff is the recorded owner of the property bearing no. 144, Near Krishna Dairy, Old Gupta Colony, Delhi ('suit property'), which was purchased by sale deed dated 09.10.1984.

3.2. He states that a false defence of oral gift in favour of Smt. Renu Gupta i.e., the mother of the defendants has been set up in the written statement to resist the prayers in the plaint, which defence is untenable in law.



3.3. He states that the defendants have been acting against the interest of the plaintiff, who is 87 years old and it was in these circumstances that the civil suit has been filed by the plaintiff for recovery of possession.

3.4. He states that the defendants were permitted to reside on the first floor of the suit property in June, 2004, on payment of Rs. 4,000/- per month as rent for use and occupation. He states however, the defendants have defaulted in making the said payment.

3.5. He states that the impugned order does not suffer from any infirmity and does not warrant any interference by this Court in exercise of its supervisory jurisdiction.

Analysis and Conclusion

4. This Court has considered the submissions of the learned counsel for the parties and perused the record.

5. The Trial Court by its impugned order has permitted the Petitioners to raise the proposed preliminary objection at Nos. 16 and 17 and has rejected the proposed preliminary objection at Nos. 10 to 15. The operative portion of the order reads as under:-

“I heard arguments on the application under Order VI Rule 17 of CPC filed on behalf of the defendants.

It has been proposed on behalf of the defendants to add eight preliminary objections as PC No. 10 to 17 in the WS by way of amendment. It is stated in proposed PC No. 10 that Smt. Renu Gupta is the owner of the house in question. In proposed PO No. 11, it is stated that suit property was given to Smt, Renu Gupta, mother of the defendants and she has been residing in it and is absolute owner. It is also stated in it that Smt. Renu Gupta declared as her hostile ownership. In proposed PO No. 12, it is stated that defendants being son of Smt. Renu Gupta have been residing as owners/sons of the owner and have raised construction from 1st to 3rd floor from their own resources without any objection from the plaintiff and the same is proof of admission by the plaintiff to the lawful ownership of Smt. Renu Gupta. It is further stated in proposed PO No. 13 that Sh. Ashok Jain has been pressuring Smt. Pushpa Jain, plaintiff to dispossess Smt. Renu



Gupta and her entire family from the suit property. It is also stated in proposed PO No. 14 that Sh. Ashok Jain alleged AR of the plaintiff has been misbehaving and threatening Smt. Renu Gupta, mother of the defendants and instigating her to dispossess the defendant nos. 1 and 2 from the house in question. In proposed PO No. 15, it is sated that Sh. Ashok Jain has been misbehaving and threatening Smt. Pushpa Jain and Smt. Renu Gupta since 01-12-2016 i.e., last date of hearing and is pressuring them to depose in his favour. In proposed PO Nos. 16 & 17, it is sated that the alleged AR Sh. Ashok Jain is estopped to file the present suit by his act and conduct and suit is not maintainable and the suit has not been filed verified as per Law and legal specifications and deserve dismissal.

Smt. Renu Gupta is not the party to the present suit. Smt. Pushpa Jain is the plaintiff and has filed the suit through his AR. It is clear from the perusal of proposed preliminary objections Nos. 10 to 15 that the pleas taken by the defendants in these proposed preliminary objections are not available to them and is only available to Smt. Renu Gupta. They cannot take such pleas or behalf of Smt. Renu Gupta. Therefore, the amendment by way of adding these proposed preliminary objections Nos. 10 to 15 cannot be allowed.

Since the proposed preliminary objection nos. 16 and 17 can be taken by the defendants themselves independently as they are not relating to Smt. Renu Gupta, the amendment by way of adding them as proposed preliminary objections is allowed and they are added as preliminary objection Nos. 10 and 11.

(Emphasis supplied)

Proposed Preliminary Objection Nos. 10 to 12

6. In proposed preliminary objection No. 10, it is sought to be contended that Smt. Renu Gupta is the owner of the property being the Class-I legal heir of late Sh. K. C. Jain. It is stated that the name of late Sh. K.C. Jain is recorded in the municipal records. It is stated that plaintiff is not the owner of the suit property.

6.1. In proposed preliminary objection No. 11, it is sought to be contended that Smt. Renu Gupta has resided in the suit property with her family for thirty (30) years and she has been in open and hostile possession of the property.

6.2. Similarly, in the proposed preliminary objection no. 12, the



defendants have contended that the construction from first floor to third floor in the suit property has been carried out by their own resources; and they are residing in the suit property for past 30 years with their mother Smt. Renu Gupta, who is the owner of the suit property.

6.3. Lastly, it is also sought to be contended that Smt. Renu Gupta has become owner of the suit property by virtue of adverse possession.

6.4. The sum and substance of these amendments proposed as preliminary objection Nos. 10, 11 and 12 is to raise a defence that the ownership rights in the suit property vest in their mother Smt. Renu Gupta by intestate succession. The defendants are disputing the ownership rights of the plaintiff. On the contrary, the plaintiff has relied upon the registered sale deed dated 09.10.1984 as the title document, standing in her name.

7. In the alternative, the defendants have sought to allege that Smt. Renu Gupta has become the owner of the suit property by adverse possession. However, the defence of the ownership by adverse possession can only be available to Smt. Renu Gupta and not the defendants herein.

8. The Trial Court has rightly held that since Smt. Renu Gupta is not a party to this suit, these defences whether of intestate succession or adverse possession on her behalf cannot be maintained by the defendants. The said defences, if at all, would have been available to Smt. Renu Gupta and not to the defendants herein. As noted earlier, Smt. Renu Gupta is alive and not a party to these proceedings.

9. Nevertheless, the said defence would not be available to the defendants, since the defendants must show an independent right to occupy the suit property.

10. The defence of construction of upper floors, adverse possession (of



defendants) has already been raised in the existing written statement and therefore, the proposed amendment to plead the said fact would lead to mere duplication.

Proposed Preliminary Objection Nos. 13 to 15

11. Similarly, the proposed preliminary objection Nos. 13, 14 and 15 pertains to alleged misconduct and misbehaviour by Sh. Ashok Jain, the son of the plaintiff with Smt. Pushpa Jain (i.e., the plaintiff) and Smt. Renu Gupta (i.e., the mother of the defendant). These facts again as rightly noted by the Trial Court offer no legal defence to the defendants in the present suit for recovery of possession.

12. In view of the finding that the defences proposed in the application are not available in law to the defendants, the reliance placed on the judgment of ***Usha Balasaheb Swami*** (supra) is of no assistance to the defendants.

13. Lastly, it would be relevant to take note of the averments set out by the defendants in their application for seeking above-said amendment. The relevant pleading reads as under: -

"2. That the suit was filed by the alleged Authorized Representative (AR) Sh. Ashok Jain in the name of his mother Smt. Pushpa Jain in the last week of November, 2015 on the basis of alleged SPA/GPA which is very likely to be either forged, fabricated document or got signed under pressure, threat, fraud and coercion from the plaintiff as the plaintiff as the real maternal grandmother of the petitioners/defendants.

3. That the previous counsel of the defendants filed the written statement to the suit approximately on 20.02.2016 and thereafter the petitioners/defendants changed their counsel and engaged M/s. Supreme Legal Services as their counsel.

4. That the new counsels informed the petitioners/defendants that there are some manifest errors of fact & law and the legal grounds In the written statement filed by their Ld. Previous counsel and the same requires to be



amended for the larger interest of substantial justice.

5. That the errors and omissions in the written statement are very material and if the application U/o 6 Rule 17 is not allowed the petitioners/defendants will suffer huge and heavy loss and injury without any fault of their own and for the inadvertent mistake of their counsel.”

(Emphasis supplied)

13.1. The aforesaid grounds furnished in the application, more specifically ‘paragraph 4’ of the application, for seeking an amendment in the written statement are without any merit.

14. This Court has been informed that issues have not been framed in this suit till date. In view of the fact that the suit was instituted on 23.11.2015 and the plaintiff was then 87 years old, the Trial Court is requested to proceed in the matter expeditiously without granting any unnecessary adjournments to either party.

15. This Court, therefore, finds that the order of the Trial Court does not suffer from any infirmity. The present petition is accordingly dismissed. Pending application(s) if any stands disposed of.

16. The interim order dated 16.02.2018 stands vacated.

17. It is made clear that no observation made in this order would bind the Trial Court while determining and adjudicating upon the defences raised in the unamended written statement, which shall be decided on its own merits and in accordance with law.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

DECEMBER 15, 2023/rhc/sk/hp