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

Date of decision: 28.11.2023

+ CM(M) 684/2023 & CM APPL. 21322/2023

CENTRAL BANK OF INDIA Petitioner

Through: Mr. Jaswinder Singh, Advocate

versus

NIRMAL KUMAR AND ORS Respondents

Through: Mr. R.K. Aggarwal, Ms. Gayatri Aggarwal, Mr. Ayush Agrawal, Advocates.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 17.01.2023 passed by the ADJ-11, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS DJ No. 614999/2016, titled as '**Nirmal Kumar and Ors. v. Central Bank of India**', whereby the Respondent No.1's application under Section 151 of Code of Civil Procedure, 1908 ('CPC') seeking amendment of the plaint was allowed.

2. The said application under Section 151 of CPC was filed in view of the fact that the Respondent No.1 inadvertently failed to incorporate the original prayer (a) of the unamended plaint, in the amended plaint filed on 24.04.2007 in pursuance of the Respondent No.1's application under Order



VI Rule 17 of CPC and allowed by the Trial Court on 23.05.2004.

2.1. The Petitioner is defendant no.1 and Respondent nos. 1, 2 and 3 are the plaintiff nos. 1, 2 and 3. The remaining defendants have been proceeded ex-parte before the Trial Court. For ease of reference, the parties are being referred to by their original rank and status as is before the Trial Court.

2.2. The civil suit was initially filed on 24.04.2007 seeking relief of declaration and permanent injunction. The prayers in the original unamended plaint read as under: -

*“a) PASS A DECREE FOR DECLARATION in favour of the plaintiffs and against the defendants thereby **declaring the Mortgage- Deed dated 9.9.1998 and other title documents submitted by the defendant Nos.3 to 5 with the defendant No.1 relating to suit property** i.e. piece of land ad-measuring 1 bigha 4 biswas comprised in Khasra No.241/1 situated at Village Mangeshpur, New Delhi and its consequent dealings/use, **as illegal, null and void ab-initio**; and*

b) Pass A DECREE FOR PERMANENT INJUNCTION in favour of the plaintiffs and against the defendants thereby restraining the defendants, their agents, associates, assigns from selling, transferring, alienating, disposing off, creating any third party interest and/or from creating any encumbrances in respect of suit property i.e. piece of land ad-measuring 1 bigha 4 biswas comprised in Khasra No.241/1 situated at Village-Mangeshpur, New Delhi by using mortgage deedillegible..... more particularly shown in red colour in the site plan attached herewith;

c) Award costs in favour of the plaintiffs and against the defendants;

d) Pass any other or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the plaintiffs and against the defendants.”

(Emphasis Supplied)

3. The plaintiffs thereafter in July, 2013 filed an application under Order VI Rule 17 CPC for amending paragraph ‘1’ of the plaint and for including a prayer of declaration. The relevant portion of the said application reads as under: -



“8. That it is submitted that after adding the new line in para 1 the said para would read as follows; -

1. That the plaintiff. had purchased a piece of land ad-measuring 1 bigha 4 biswas comprised in Khasra No.-241/1 situated at Village Mangeshpur, New Delhi from the defendant No.-2 vide three separate registered sale deed dated 08.06.1994. (The defendant No.-2 had further purchased the said plot from Sh. Jagat Ram on 30th June 1989 vide registered sale deed duly executed in the office of Sub-Registrar Vide registered document No.7438, Volume No.-6129 on pages 120-122, additional book No.-1, dated 30.06.1989). The names of the plaintiffs were duly mutated in the revenue authorities as well. The said land is still in possession of the plaintiffs. The same is shown in red color in the site plan attached herewith and hereinafter referred to as ‘suit Property’.

The plaintiffs No.-2 is house wife and plaintiff No. -3 is. Handicapped, hence, they have authorized the plaintiff No. 1 as their attorney to do the needful in respect of suit property.”

9. That it is submitted that the after adding the prayer for declaration of ownership the suit property on the basis of registered sale deeds dated 08.06.1994 in favour of the plaintiffs the prayer clause (a) of the prayer would read as follows: -

*“PASS A DECREE FOR DECLARATION” in favour of the plaintiffs and against the defendants and thereby **declaring the plaintiffs as the owner of the suit property** i.e. land ad-measuring 1 bigha 4 biswas comprising in Khasara No.-241/1, situated in Village Mangeshpur, New Delhi, on the basis of registered sale deeds dates 08.06.1994 executed by defendant No.2 in favor of plaintiffs.”*

(Emphasis Supplied)

4. The amendment application was allowed on 23.05.2014 and the amended plaint dated 04.07.2013 was taken on record before the Trial Court.

5. After the evidence stood concluded, the Trial Court at the stage of final arguments upon perusal of the record observed that though in the



amended plaint filed by the plaintiffs, the decree for declaration with respect to ownership of suit property had been included; however, the original prayer seeking a decree of declaration to the effect that the mortgage deed dated 09.09.1990 is null and void, was absent.

6. It was in these circumstances that the plaintiffs filed the application under Section 151 of CPC seeking to amend their plaint to include the prayer for declaration as it existed in the original plaint, in addition to the prayer of declaration, which was incorporated vide the amended plaint.

7. The Trial Court vide impugned order dated 17.01.2023, after perusing the record, was of the opinion that the omission of the original prayer 'a', (which finds mention in the original plaint) in the amended plaint was inadvertent and, therefore, the application under Section 151 of CPC was allowed; and the plaintiffs were permitted to file an amended plaint, so as to include the original prayer of declaration with respect to ownership and the second prayer of declaration qua the nullity of the mortgage deed.

8. Learned counsel for the Petitioner states that the Trial Court could not have permitted this amendment through the plaint at the stage of final arguments and there is a presumption that the omission of the original prayer 'a', while filing the amended plaint, was a deliberate and conscious act of the plaintiffs.

8.1. He relies upon the judgment of the Supreme Court in *K. Raheja Constructions Ltd. and Anr. vs. Alliance Ministries and Ors., 1995 Supp (3) SCC 17* and *Radhika Devi vs. Bajrangi Singh & Ors., (1996) 7 SCC 486*, to contend that by allowing this application at the stage of final arguments, the Trial Court has permitted a time-barred relief to be brought on record.



8.2. He states that the ratio of these judgments is that if a right has accrued in favour of the defendant, the amendment cannot be permitted to take away such a right in its favour.

8.3. In reply, the learned counsel for plaintiffs' states that the Respondent plaintiffs are the owners of the subject property i.e., land ad-measuring 1 bigha 4 biswas comprising in Khasara No. 241/1, situated in Village Mangeshpur, New Delhi.

8.4. He states that the said property was purchased from defendant no. 2, Mrs. Indira Wati wife of Lekhi Ram, who executed the registered sale deed dated 08.06.1994 in favour of the plaintiffs.

8.5. He states that the defendant i.e., the Central Bank of India, is relying upon a mortgage deed dated 09.09.1990 allegedly executed by defendant no. 5, who is also known as Smt. Indira Wati wife of not known.

8.6. He states that since inception it has been stand of the plaintiff that the purported mortgage deed dated 09.09.1990 is null and void as the alleged Mrs. Indira Wati has impersonated and created a false document.

8.7. He states it is a matter of record that the alleged Mrs. Indira Wati i.e., defendant no. 5, did not even step into the witness box and has been proceeded ex-parte.

8.8. He states that the Trial Court has rightly held that the omission to include the original prayer 'a' was an inadvertent omission and the parties have led evidence, conscious of the relief sought by the plaintiffs in their original plaint.

8.9. He states that the only contesting defendant i.e., defendant No.1, elected not to file any reply before the Trial Court to the present application, which was allowed by the Trial Court; and therefore, there is no error in the



impugned order passed by the Trial Court.

9. This Court has considered the submissions of the parties and perused the order of the Trial Court.

10. This Court is of the opinion that there is no infirmity in the order of the Trial Court, the relevant portion, whereof reads as under: -

“I have considered the submissions.

It is to be seen that after the amendment application was allowed, perusal of the record reveals that amended plaint was filed. However, in the amended plaint so filed, an additional prayer of the declaration of ownership which was sought and allowed vide order dated 23.05.2014 was included but inadvertently one of the original prayers could not be incorporated.

A perusal of the record reveals that the plaintiff vide the application under Order VI Rule 17 ere sought an additional declaration of ownership along with the declaration already sought regarding the nullity of the documents i.e. mortgage deed and other documents and thus, it is evident that this was an inadvertent mistake and the relief which had already been allowed cannot be taken away from the plaintiff now.

Here again, the relief is of formal nature and therefore, application under section 151 CPC is allowed. Amended plaint filed with the application u/s 151 CPC is taken on record.”

11. It is a matter of record that in the application seeking amendment of plaint filed by the plaintiff in 2013, there was no permission sought of the Court to delete the original prayer ‘a’ as it existed. It is trite law that any addition or deletion to a pleading in a suit cannot be made by a party without the express permission of the Court. In the facts of this case, no permission was sought and none granted by the Court to the plaintiff to delete the original prayer ‘a’ of the plaint. It is thus apparent that the non-inclusion of the original prayer ‘a’ in the amended plaint was inadvertent and in fact, a typographical error. In the opinion of this Court, therefore, the Trial Court rightly allowed the application filed by the plaintiff under Section 151 CPC



for amending the plaint to duly reflect the original prayer 'a' seeking declaration of nullity of the mortgage deed.

12. In the facts of this case, the parties went to trial and led evidence with full notice that the plaintiff was contending that the mortgage deed is a nullity. The defendant no. 1 had notice that this was an issue arising for consideration and led evidence accordingly.

12.1. This is fortified from the fact that vide the impugned order, after the Trial Court recast the issues, it gave an opportunity to the defendant herein to lead evidence on the recast issues; however, the defendant made a statement that no additional evidence is required to be led by the defendant, as the evidence led on record is sufficient to meet the issues framed (including the recast issue).

13. In the facts of this case, this Court has perused the original plaint, the application filed by the plaintiffs under Order VI Rule 17 of CPC on 09.07.2013 and is satisfied with the observation made by the Trial Court that the omission to include the initial prayer 'a' was inadvertent and not a conscious election by the plaintiffs.

14. Accordingly, this Court finds no merit in this petition and the same is dismissed. Pending applications, if any, stand disposed of.

15. Needless to state that no observation made in this order will be an expression on the merits of the claim raised in the plaint and the same shall be decided by the Trial Court at the stage of final adjudication in accordance with law.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 28, 2023/rhc

[Click here to check corrigendum, if any](#)