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

% Judgment delivered on: 10.03.2023

+ CM(M) 1125/2021 & CM APPL. 44166/2021, CM APPL.
44167/2021

SMT. SARITA CHAUDHRY Petitioner
versus

MS. SANYOGITA GHEI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajendra Chaudhary, Adv.

For the Respondent : Ms. Sapna Singh Pathania, Respondent
No.2 in person

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 09.09.2021 in CS10239/2016 titled "*Sarita Chaudhary Vs. Sanyogita Ghei & Anr.*" whereby the learned Trial Court has dismissed her application under Order VI Rule 17 CPC, 1908 seeking amendment to the suit plaint.
2. Mr. Chaudhary, learned counsel appearing for the petitioner/plaintiff submits that this is a partition suit between the siblings of late Smt. Promila Ghei.
3. Learned counsel submits that there are two properties which are subject matter of the partition suit. Learned counsel submits that once the written statement was filed on behalf of respondent No.2, the

petitioner/plaintiff became aware that one of the properties was sold to respondent No.2, by the mother of the parties i.e. Smt. Promila Ghei, in the year 2009 by way of a registered sale deed.

4. Mr. Chaudhary, learned counsel submits that once the fact regarding the registered sale deed of one of the properties in the name of respondent No.2 came to the knowledge of petitioner/plaintiff, the petitioner/plaintiff sought amendment under Order VI Rule 17 CPC, 1908 seeking declaration that the sale deed registered with the Sub Registrar-V New Delhi executed by Smt. Promila Ghei in favour of Sapna Pathenia is void and neither binding nor operating against the petitioner, apart from other reliefs which were sought.

5. Mr. Chaudhary submits that learned Trial Court overlooked the fact that this was for the first time, that the petitioner/plaintiff gained knowledge of such sale deed in favour of respondent No.2 and therefore, challenge to the said alienation arose only on such knowledge.

6. Mr. Chaudhary further submits that the petitioner/plaintiff always had an option filing a separate suit, though to curb multiplicity of litigation, the petitioner/plaintiff filed an application under Order VI Rule 17 CPC, 1908 to amend her plaint as also the prayer paragraph.

7. *Per contra*, learned counsel appearing for the respondent No.1, and respondent No.2 in person-Ms. Pathania submit that the impugned order is sustainable in law for the reason that in a partition suit, the petitioner/plaintiff is not entitled to raise a question on the registered sale deed which should and ought to have been done by way of a separate suit.

8. Learned counsel appearing for the respondent No.1 as well as Ms.

Pathania, submit that the impugned order has considered the fact that the petitioner has also raised a number of arguments in the garb of the amendment, which are also unsustainable and cannot form part of the amended plaint in any case.

9. This Court has considered the rival submissions and perused the contents of the amendment application under Order VI Rule 17 CPC, 1908.

10. It is admitted case of the parties that the registered sale deed in the name of Ms. Pathania-respondent No.2, by way of a registered sale deed, was propounded and filed for the first time in the Trial Court along with the written statement of Ms. Pathania. It is also not disputed that the petitioner/plaintiff had no knowledge of the existence of the said sale deed.

11. In view of the aforesaid facts, it goes without saying that the cause of action to challenge the aforesaid registered sale deed of the year 2009, arose in favour of the petitioner/plaintiff as on the date of knowledge, that is, the filing of the written statement along with the necessary averments in that regard. Keeping in view that the knowledge was obtained at the time of filing of the written statement, the petitioner/plaintiff was entitled to challenge the same in the Court of law by appropriate proceedings. In that, petitioner/plaintiff could have filed a separate suit challenging the said alienation by way of a registered sale deed.

12. It is also trite that in order to avoid multiplicity of litigation, specially having regard to the fact that in a partition suit, it is between the siblings and not involving a stranger, it would be in the interest of

justice to challenge the same in the same proceedings instead of being registered to a separate suit. The view of this Court is also in consonance with the judgment of Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr. (2022 SCC OnLine SC 1128)*** whereby the Hon'ble Supreme Court had categorically directed that all amendments, unless they are time barred, ought to be allowed on the premise that the opposite party would always have the opportunity to oppose the same by way of an appropriate pleading and will be necessarily subject to the trial, whereby the such averment and contentions would be tested in accordance with law.

13. In that view of the matter, this Court is of the considered opinion that the order passed by the Trial Court is unsustainable in law and the amendment as such ought to have been taken on record. The application seeking amendment ought to have been allowed and amended plaint also taken on record.

14. In view of the aforesaid, the amendment as sought by the petitioner/plaintiff is allowed and the learned Trial Court is directed to take the amended plaint on record.

15. The aforesaid directions are without prejudice to the rights and contentions of the respondents who are the defendants before the Trial Court. They are at liberty to take all and any objections on facts and on law against the amended plaint by filing their amended written statements.

16. It is informed that the suit is listed for further proceedings on 18.03.2023.

17. Learned counsel appearing for the respondent No.1 as well as Ms. Pathania who appears in person submit that they will file their respective written statements taking all the objections which are available to them, on or before 18.03.2023 when the subject suit is listed before the learned Trial Court. The learned Trial Court shall thereafter proceed in accordance with law.

18. It is also been informed that the present suit has been hanging fire since the year 2010. The learned Trial Court is requested to expeditiously dispose of the present suit in all earnest preferably within 12 months from today.

19. In view of above, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J .

MARCH 10, 2023/ms