

\$~8

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

% Judgment delivered on: 27.03.2023

+ CM(M) 1472/2018 & CM APPL. 50579/2018, CM APPL.
7194/2021

NARAYAN SINGH

..... Petitioner

versus

THE VICE CHAIRMAN, DELHI DEVELOPMENT
AUTHORITY

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rakesh Kakar, Advocate with Ms.
Varsha, Advocate

For the Respondent : Mr. Dhruv Tamta, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 14.09.2018 in Suit No. 9720/16 titled as "*Narayan Singh vs. DDA*", whereby an application under Order VI Rule 17 of the CPC, 1908 filed by the petitioner/ plaintiff, was dismissed on the ground that more than 10 years have elapsed from the date of filing of the suit, as also made comments on merits of the documents relating to the land bearing Khasra No.825/1 that the same was prepared on 08.02.2008 and no reasonable explanation has been forthcoming as to why the said document was not

filed along with the plaint.

2. Mr. Rakesh Kakar, learned counsel appearing for the petitioner submits that the trial is yet to commence, in that, the affidavit of evidence of the sole witness on behalf of the petitioner/ plaintiff, namely, the plaintiff himself as PW-1, is yet to be filed.

3. Learned counsel submits that no doubt that the documents placed before this Court as Annexure P-4 and P-5, which is a copy of the measurement of land is stated to be of the respondent itself, was now sought to be filed and certain amendments to the plaint were necessitated on the basis of such document.

4. Learned counsel submits that having regard to the fact that the evidence is yet to commence on behalf of the petitioner/ plaintiff, it would be in the interest of justice to permit the petitioner/ plaintiff to place the said documents on record as also to make necessary amendments to the merits of the plaint.

5. *Per contra*, learned counsel appearing for the respondent/ DDA submits that the petitioner/ plaintiff in his original plaint had not disclosed the khasra numbers where his House No. 352E/5-B, Village Mohammadpur, Munirka Gaon, New Delhi, was situated and now to circumvent the logical conclusion that would have fallen from the non-disclosure of the khasra number, has come up with this extraneous consideration of presenting the document stated to be authored by the MCD, of which, there is no way of authenticating the proof of.

6. Learned counsel also submits that the respondent/ DDA has categorically asserted that the said property falls within Khasra No. 1191/701/2/2 (min), which is an acquired land and the said property of

the petitioner/ plaintiff ought to be demolished and removed from the land bearing the said khasra number.

7. Learned counsel submits that only to avoid the process of law, now the petitioner/ plaintiff is seeking to introduce a new story to the extent that his property is situated in Khasra No. 825/1, which he claims and alleges to not have been acquired by the respondent DDA.

8. Learned counsel submits that such contradictions as well as averments which tend to change the nature of the suit, ought not to be allowed and the present petition should be dismissed with costs.

9. This Court has considered the rival contentions of the parties and perused the impugned order as well as the documents annexed as annexure P-4 and P-5 on record.

10. Admittedly, the evidence on behalf of the petitioner/ plaintiff is yet to commence and only issues in that regard have been framed. Though, no doubt that technically the trial may have commenced to the extent that issues have been framed, however, the further proceedings to the next stage where the evidence of the parties are to be recorded is yet to commence.

11. Moreover, the assertion of the plaintiff in his plaint is that the area in which the petitioner is situated is not an acquired land and, therefore, it cannot be interfered with by the DDA, has been consistent.

12. It is also clear that the learned Trial Court while dealing with the amendment as sought, has dealt with the merits of the said amendment overlooking the judgment of the Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another* reported in **2022 SCC OnLine SC 1128**, where the Supreme

Court has categorically held that the amendments ordinarily ought to be allowed, specially in case the trial has not commenced in those proceedings.

13. It would be apposite to extract the relevant para of the judgment passed in *Life Insurance Corporation of India (supra)* hereunder:-

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be

time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party

seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)”

14. It is clear from the ratio as laid down by the Supreme Court in respect of amendments to be carried out under Order VI Rule 17 that the same should be allowed liberally barring certain cases, which have been spelt out clearly by the Supreme Court.

15. The fact that there is a Khasra No. 825/1 and the assertion of the plaintiff that his property falls within the Khasra No. 825/1 is an assertion which can be permitted to be placed on record inasmuch as the same would not change the nature of the suit.

16. No doubt that the said document appears to have been prepared in the year 2008, however, keeping in view the fact that the trial has not yet commenced in the present suit wherefrom the present petition arises, it would be in the interest of justice to permit the petitioner/ plaintiff to amend his plaint strictly in accordance with law laid down by the Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited (supra)*.

17. The aforesaid directions, however, are without prejudice to the rights and contentions and any objections legal or factual to be taken by the respondent DDA in its amended written statement in accordance with law.

18. In view of the aforesaid, the impugned order dated 14.09.2018 is set aside.

19. The learned Trial Court is directed to take the amended plaint on record.

20. It is informed by the learned counsel appearing for the petitioner/ plaintiff that the suit is listed for consideration tomorrow. The learned Trial Court shall provide sufficient opportunity to the respondent to file its amended written statements which shall not be less than eight weeks from today. The learned Trial Court to proceed with in accordance with law thereafter.

21. In view of the above, the petition along with pending applications is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 27, 2023/nd

