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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 21st October, 2024+ C.R.P. 25/2023, CM APPL. 4823/2023 (stay)

SUJAN BUILDER PRIVATE LIMITED

.....Petitioner

Through: Dr. Amit George, Mr. Manish Gandhi
and Ms. Rupam Jha, Advocates.

versus

ASHISH KUMAR JAIN AND OTHERS

.....Respondents

Through: Counsel for R1 (appearance not
given)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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21.10.2024**CM APPL. 4825/2023 (condonation of delay in re-filing the Petition)**

1. The Application under *Section 151 of the Code of Civil Procedure, 1908 ('CPC' hereinafter)* has been filed on behalf of the Petitioner for condonation of delay of 51 days in re-filing the accompanying Petition.
2. For the reasons stated in the Application and in the interest of justice, the delay of 51 days in re-filing the accompanying Petition, is condoned and the Application is allowed.
3. The Application is disposed of accordingly.

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4. The Revision Petition under *Section 115 of the CPC* has been filed on



behalf of the Petitioner (*Defendant No. 2 in the original Suit bearing CS No. 2678/2016*) to challenge the Order dated 03.08.2022 passed by the learned Additional District Judge *vide* which the Amendment Application under *Order VI Rule 17 CPC*, of the Respondent No. 1/Plaintiff has been allowed.

5. Suit bearing CS No. 2678/2016, titled *Ashish Kumar Jain vs. Sohan Lal & Ors.*, was filed by the Plaintiff-Mr. Ashish Kumar Jain for **Possession and Declaration** of Ownership of the Plaintiff, in the Suit Property bearing No. 1/10949, Subhash Park, Naveen Shahdara Ext. Delhi-110032 and also to **Declare** Five Sale Deeds dated 08.05.2013, 03.03.2014, 04.03.2014, 17.06.2014 and 21.07.2014 *as null and void*. The recovery of Rs.2,02,760/- was also sought from Mr. Sohan Lal (*Respondent No.2 herein*) as rent w.e.f. 21.07.2007 @ Rs. 5,480/- per month.

6. *Briefly stated*, the Respondent No.1/Plaintiff, Mr. Ashish Kumar Jain, had earlier filed a Civil Suit bearing CS No. 409/2007 against the Respondent No.2/Defendant No.1, Mr. Sohan Lal and Others on similar averments that he had purchased the Suit Property from Mr. Sohan Lal/ Respondent No.2 for a sale consideration of Rs.2,00,000/-, on the basis of unregistered Agreement to Sell, Receipt, unregistered Will and one Registered General Power of Attorney (GPA) dated 21.08.2002. On the same day i.e. 21.08.2002, he leased the suit property to Mr. Sohan Lal as his tenant on a rent Rs.5,480/- per month. Apparently, the status of Mr. Sohan Lal changed from that of an owner to the tenant. When it was revealed that property has been sold further by Mr. Sohan Lal to others, the Suit was withdrawn with liberty to file afresh and the present Suit was filed.

7. It was further alleged that Mr. Sohan Lal had objected to the mutation Application of Mr. Ashish Kumar Jain and also failed to pay the rent amount



for more than three years. The Plaintiff, thus filed the Suit for Declaration and Possession.

8. The Suit was contested by Mr. Sohan Lal, who in his Written Statement claimed that in fact, some financial/loan transactions had taken place between Mr. Ashish Kumar Jain and himself and under the garb of securing the loan sanction, signatures of Mr. Sohan Lal had been obtained by Mr. Ashish Kumar Jain, on various documents. After the alleged loan amount was settled, the Defendant No.1, Mr. Sohan Lal came to know about the execution of the Registered Agreement, General Power of Attorney, which he then cancelled *vide* Cancellation Deed dated 28.06.2004.

9. Thereafter, the Respondent No.1/Plaintiff- Mr. Ashish Kumar Jain, got the Petitioner and Respondent Nos.3 to 8, impleaded as Defendants Nos.2 to 8, under *Order 1 Rule 10 CPC* in CS No. 409/2007. The Petitioner and as Defendants Nos.2 to 8 appeared filed their objections regarding impleadment and the maintainability of CS No. 409/2007. In response to these objections, the Plaintiff withdrew the suit, with permission to file it in an appropriate court. Subsequently, Respondent No.1/Plaintiff filed a fresh suit, CS No. 2678/2016 titled *Ashish Kumar Jain vs. Sohan Lal & Ors.*

10. *Defendant Nos.2 to 8* filed their Written Statement. Thereafter, two Amendment Applications were filed on behalf of the Plaintiff-Mr. Ashish Kumar Jain, which were allowed. Thereafter, the third Application under *Order 6 Rule 17 CPC* had been filed, which has been allowed *vide* impugned Order.

11. *The grounds of challenge* of the impugned Order, is that the amendment could have been permitted under *proviso to Order 6 Rule 17 CPC* only if the circumstances sought to be impleaded by way of an



amendment, were not within the knowledge of the Plaintiff, at the inception or the initial stage or that the new facts got revealed subsequently. These requisite requirements were never pleaded by Mr. Ashish Kumar Jain when seeking the amendment of his Plaint. The Defendants Nos.2 to 8 had explained that the title of the Suit Property, had been transferred to them *vide* Registered Sale Deeds, in accordance with the Transfer of Property Act, 1882 and *Section 17 of the Registration Act, 1908*. However, the Suit of the Plaintiff for Declaration of his title of ownership vests on unregistered Agreement to Sell and such other documents. It is claimed that the Plaintiff had earlier filed a Suit bearing CS No. 409/2007 wherein all these facts had come on record and the Plaintiff had withdrawn the Suit with liberty to file afresh and the present Suit thereafter, got filed. It is asserted that the proposed amendments/reliefs incorporated by virtue of this amendment, were barred under *Order 2 Rule 2 of CPC*, as they were not impleaded in the earlier two Amendment Applications.

12. *Further objections* taken is that the Registered Sale Deeds in favour of the Defendant Nos.2 to 8 were executed in 2014. The proposed amendment to challenge the Sale Deed, had been sought to be made *vide* Application dated 31.07.2018, that is beyond three years and seven months. Furthermore, it is the case of the Plaintiff himself that the *Defendant No.1/Mr. Sohan Lal*, has sought to oppose his mutation Application. It is, therefore, evident that the reliefs being claimed by the Plaintiff, are barred by limitation.

13. *It is argued on behalf of the Revisionists* that the Amendment Application has been allowed in a mechanical manner, without considering that the Plaintiff had initially omitted to sue in respect of the Suit properties



initially, which implies that he has either relinquished or given up his claims in this regard. The impugned Order of allowing the amendment of the Plaint is, therefore, not tenable.

14. *The Respondent No.1, Mr. Ashish Kumar Jain (Plaintiff in the main Suit) has filed a detailed Reply* wherein it has been explained that he had filed an earlier *Suit in 2007 seeking Declaration, Injunction and Recovery of Arrears of Rent*, in respect of the Suit property against Mr. Sohan Lal, on the premise that he had purchased the property from Mr. Sohan Lal, on the basis of Agreement to Sell etc. and thereafter, on the same day, inducted Mr. Sohan Lal, as a tenant in the Suit property. It is further explained that the rent was being regularly paid by Mr. Sohan Lal, for which the rent receipts were being issued. However, he became irregular in making the payment of rent and started questioning the ownership of the Plaintiff-Mr. Ashish Kumar Jain, in the Suit property.

15. The Plaintiff subsequently became aware of the sale transactions between Defendant No.1-Mr. Sohan Lal and Defendants No.2 to 8. Consequently, he sought their impleadment of Defendants No.2 to 8, which was allowed by the Court. However, he withdrew the said Suit and filed the present Suit in 2016.

16. It is asserted that not only the present Suit is maintainable but the amendments have been sought before the commencement of the Trial. The Court is required to adopt a liberal approach as has been held by the Apex Court, in the Case of Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. and Anr., Vinay Krishna vs. Keshav Chandra, (1993) Supp (3) SCC 129; Union of India vs. Ibrahim Uddin, (2012) 8 SCC 148; Vasantha (Dead) Thr. LR vs. Rajalakshmi @ Rajam (Dead) Thr. LRs, in



Civil Appeal No. 3854/2014.

17. In the end, it is submitted that the Application *under Order 6 Rule 17 CPC*, has been rightly allowed and the present Revision Petition is not maintainable.

18. *Learned counsel on behalf of Defendants No.2 to 8, had stated that* the necessary facts had been suppressed by the Plaintiff in the Suit. Initially, when the objections were raised by Defendant No.1, Defendants No.2 to 8 were impleaded as party to the suit. It is further argued that there are Five Sale Deeds had been challenged in regard to which the objection had been taken about the maintainability and deficiency of Court Fees in April and May, 2018, despite which no corrective measures were taken; instead the amendment Application, had been filed.

19. It is claimed that the Respondent No.1/Plaintiff had fraudulently without the knowledge of Mr. Sohan Lal, obtained his signatures on some papers which he had cancelled immediately on becoming aware of them. The Plaintiff was never in possession of the Suit property as he himself has stated that the possession was with Mr. Sohan Lal (*Defendant in the Suit*). The Defendants No.2 to 8 are the registered owners of the property in question, by virtue of registered Sale Deeds executed in their favour in 2014. The Suit of the Plaintiff is based on the Agreement to Sell on the basis of which the title Suit for Declaration of ownership, is not maintainable.

20. Furthermore, Defendants No.2 to 8, after having purchased the property in question, had carried out the construction, which took about 1.5 years. The Plaintiff could have filed the Suit for Injunction against the Revisionist and the other Defendants. He also did not prefer to file a Suit for cancellation of Sale Deeds and the relevant facts were concealed by the



Plaintiff, in the original Plaint. He is not entitled to the equitable relief as he has not approached the Court, with the clean hands.

21. It was further submitted that even if the Plaintiff is held to be not aware about the sale transactions between Mr. Sohan Lal and the Defendant Nos.2 to 8, then there was no justification for his having filed an Application under *Order 1 Rule 10 CPC*, for impleading them as a party to the Suit. No relief can be allowed by way of amendment about which the Plaintiff was aware even at the time of filing of the Plaint. In fact, Petitioner/Defendant No.2 was the actual and absolute owner of the Suit Property in question by virtue of a registered Sale Deed, which he has sold to the other Defendants No.2 to 8. The Amendments has not only changed the spirit of the Plaint but has also resulted in miscarriage of justice. It is, therefore, submitted that the impugned Order is liable to be set-aside.

22. Submissions heard.

23. Essentially, the Respondent No.1/Plaintiff has sought the relief of cancellation of the Sale Deeds executed in favour of the Defendant Nos. 2 to 8. The main argument is that the Plaintiff became aware about these Sale Deeds in the earlier Suit, which he had withdrawn with the liberty and thereafter, filed the present Suit in 2016. The amendments which have been allowed to challenge the Sale Deeds, is patently barred by limitation.

24. However, this contention that the relief so incorporated by way of amendment, are barred by limitation is a defence available to the Revisionist and to the other Defendants, which they are at liberty to take in their amended Written Statement. The fundamental law while allowing an Application under *Order 6 Rule 17 CPC*, especially before the trial has commenced, is liberal and merely because an amendment is allowed to be



made in the Suit, does not preclude the Defendants from taking their defences including that of Limitation, in the Written Statement.

25. *The second ground of challenge* is that this is the third amendment Application filed by the Plaintiff, and the proposed amendments which have now been sought to be added to the Plaint, could have been included in the earlier two Amendment Applications as these facts were well within his knowledge. As already mentioned above, the Amendments are sought to be made before the commencement of the trial. The merits of the facts incorporated in the Plaint by way of amendment, is not to be scrutinized at the time of allowing the amendments. The merits of the averments included in the Plaint, has to be decided under the appropriate proceedings, which may be under *Order 7 Rule 11, CPC* or *Order 12 Rule 6, CPC* or after the trial of the Suit.

26. There is no infirmity in the impugned Order dated 03.08.2022. The Revision Petition is hereby dismissed.

27. The Revision Petition is disposed of accordingly along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 21, 2024/RS