



2024:DHC:5386



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

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Judgment reserved on: 07.05.2024
Judgment pronounced on: 22.07.2024

+ CM(M) 731/2022, CM APPL. 32730/2022—stay

SMT. SUDESH ANIL

..... Petitioner

Through: Mr. L. K. Singh, Adv.

versus

SHRI ANIL ARORA & ORS.

..... Respondents

Through: Ms. Jyoti Saini Luthra and Ms.
Aakanchha Jhunhunwala, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. This petition under Article 227 of the Constitution of India emanates from the order 01.04.2017 passed by the ACJ/CCJ/ARC, Karkardooma Courts, New Delhi in Civil Suit No.110/2014 and the order dated 10.05.2022 passed by the learned Civil Judge, Karkardooma Court, New Delhi [in short “Trial Court”] in Civil Suit No. 7747 of 2016 titled as “*Sudesh Anil vs Anil Arora & Ors*”. Vide order dated 01.04.2017, the learned Trial Court rejected the amendment application moved by the petitioner/plaintiff and vide order dated 10.05.2022, the petitioner’s application for review of the order dated 01.04.2017 was dismissed by the learned Trial Court.

2. The facts, in brief, are that the petitioner herein in 2014 filed a civil Suit seeking inter alia, permanent injunction and declaration against the



respondents. The petitioner has averred that upon construction of the suit plot i.e. 1-C, Shastri Gali, West Babarpur, Shahdara, Delhi, 110032 by the builder and apportioning the share of the builder, the remaining portion was not distributed in terms of the family agreement. The petitioner further contended that the family settlement had been violated and the upper ground floor in the suit plot was illegally transferred to respondent no.2 by respondent no.3 posing as the absolute owner. Along with the suit the petitioner placed on the record, the following documents i.e., Family General Power of Attorneys dated 11.10.2010, 05.01.2012; Relinquishment Deed dated 05.01.2012 and Registered Gift Deed dated 22.01.2014.

3. Summons of the suit were issued upon the respondents on 21.04.2014. In the meanwhile, the petitioner sought a second legal opinion with respect to the facts of the suit and she was advised to amend the suit as it suffered from technical defects since there was no valuation clause or jurisdiction clause included in the suit and even the facts were not pleaded in correct prospective. So much so that the reliefs claimed were legally inappropriate. Therefore, to remedy the situation, the petitioner on 13.05.2021 filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 [in short "CPC"]. The respondents filed the reply and the petitioner filed rejoinder to the same.

4. The learned Trial Court on 01.04.2017, dismissed the application filed by the petitioner under Order VI Rule 17 CPC. Aggrieved by such action of the learned Trial Court, the petitioner approached this court by way of CM(M) No.605/2017 on 24.05.2017. In the said petition, this Court vide its order dated 12.03.2018, granted the petitioner a liberty to approach the



learned Trial Court by way of a review application, thereby dismissing the petition as withdrawn.

5. As per the liberty granted by this Court, the petitioner on 12.04.2018 filed an application under Order XLVII Rule 1 read with Section 114 of the CPC for a review of the order dated 01.04.2017. The respondents filed their reply to the said application and on 10.05.2022, vide the impugned order; the learned Trial Court dismissed the review application filed by the petitioner while stating that the application was devoid of any merit and that the order dated 01.04.2017 was a well-reasoned one. The petitioner was thus compelled to file the present petition.

6. I have heard the learned counsel appearing for the parties and have gone through the record as well as the impugned order.

Submissions of the petitioner

7. The primary submission of the learned counsel for the petitioner is that the petitioner merely sought to rectify technical defects in her plaint and the amendment sought for was in the nature of introducing a claim which was based on the same cause of action. The learned Trial Court ignored the factual position and failed to appreciate that the amendment sought by the petitioner did not introduce a new cause of action nor did it change the nature of the suit.

8. It was next submitted on behalf of the petitioner that no prejudice could have been caused to the respondents in case the amendment had been allowed as they were still to file their written statement and the case was at an initial stage. The learned counsel further submitted that the learned Trial Court gravely erred in ignoring the elementary principle of law that the power of the court to allow the amendment is wide and it may at any stage



be appropriately exercised, if nature of the amendment sought is not barred by limitation and does not create a new cause of action or a controversy totally tangent to the existing controversy.

9. It was submitted that in the present case, the amendment sought was necessary for determination of real question in controversy.

10. The learned counsel also submitted that apparently the contents of two documents i.e., Family GPA dated 11.10.2010 and 05.01.2012 would clearly show that the petitioner has simply signed the same, as called upon to do so by her husband and therefore, was not aware of its contents. In case the petitioner is not permitted to amend the suit it shall be fatal to her interest and highly unjust and unfair to her.

11. Finally the learned counsel submitted that learned Trial Court adopted an extremely erroneous approach by analysing the nature of the amendment sought on the basis of the reliefs claimed in the original suit and the said fact has been ignored by the learned Trial Court while disposing of the review application of the petitioner while contending that the same was devoid of any merit.

Submissions of the respondents

12. While supporting the impugned orders, the learned counsel for the respondents submits that no error has been committed by the learned Trial Court in passing the aforementioned orders as no such ground has been made out to allow the amendment application and therefore, finding no error apparent on the record, the review application was accordingly, dismissed by the learned Trial Court.

13. Further, opposing the submissions made by the petitioner, the learned counsel for the respondents submits that the grounds taken by the petitioner



are false and frivolous as in the application filed by the petitioner under Order VI Rule 17 of the CPC, the only ground taken by the petitioner was that of a discovery of a new document. In the present petition, other grounds such as second opinion from a new counsel and the plaint having technical defects have been raised for the first time. Thus, the petition is devoid of merits and be rejected. In support of the contentions, the learned counsel placed reliance upon the decision in **Asian Hotels (North) Ltd. vs. Alok Kumar Lodha & Ors.** [2022 LiveLaw (SC) 585] and **Kishore Motiani vs. Om Prakash & Sons & Ors.** [2003 (66) DRJ 376].

Reasons and Conclusions

14. I have heard the learned counsel appearing for the parties at length and have gone through the record as well as the impugned orders.

15. I may begin by noting the settled legal position that while considering an application for amendment of plaint, the merits of the amendment are not to be looked into by the Court. In **Life Insurance Corporation of India vs. Sanjeev Builders Private Ltd. & Anr.** [MANU/SC/1093/2022], the Hon'ble Supreme Court laid down the guidelines required to be considered while dealing with an application under Order VI Rule 17 CPC which are as under:-

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

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(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 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 pin-pointedly 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 & Ors.**, 2022 SCC OnLine Del 1897)”*

16. Keeping in view the broad principles stated above in mind and applying the same to the facts of the present case, the first aspect of the matter is that the stage of the suit when the petitioner has filed the application seeking amendment of the plaint. It is seen that the plaint was registered as a suit on 21.04.2014 when *inter alia* summons of the suit were issued to the respondents returnable on 13.05.2014. On the said date, the respondents entered appearance through their counsel and the petitioner filed the application seeking amendment of the suit. Undisputedly, the respondents are yet to file their written statement. Thus, the suit is at its infancy.

17. The next question to be considered is whether the proposed amendments as claimed by the petitioner change 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. Basically the amendments sought by the petitioner can be bifurcated into two parts: one is for amendment of the plaint by making additional averments and challenging a particular document i.e., registered Relinquishment Deed dated 05.01.2012 and the other amendments pertaining to correction of technical defects appearing in the plaint.

(i) As seen from the application seeking the amendment, the petitioner wants to challenge the illegality and validity of the registered Relinquishment Deed dated 05.01.2012 stated to be executed by defendant no. 1 & 4 in favour of their father i.e., defendant no. 3. By way of proposed amendment, the petitioner wants



to add averments pertaining to the said Relinquishment Deed and urges that this Relinquishment Deed is a paper document and not enforceable. For this, the petitioner wants to amend the plaint and add paragraphs 10(A) to 10(G) and consequently, wants to delete the existing paragraph no. 11 by replacing it and by urging that the petitioner is in settled legal possession of both the upper ground floor flat as well as first floor of the flat as she has an undivided interest in both the flats;

(ii) The other amendment sought is to complete, an incomplete paragraph, that is paragraph no. 20 of the plaint wherein the plaintiff seeks to correctly describe as to on what basis the court has territorial jurisdiction to entertain and try the present suit;

(iii) Further by introducing paragraph 21, the petitioner intends to correctly value the suit for the purposes of suit valuation and court fees;

(iv) Further, the petitioner wants to amend prayer clause so as to seek specific declarations instead of vague declaration sought in the original plaint and also to add the relief of mandatory and perpetual injunction;

(v) Lastly, the petitioner also wants to amend the verification clause so as to properly verify the plaint upon the amendments being carried out in the original plaint.

18. The main case set up by the petitioner/plaintiff in the plaint is that by virtue of family settlement recorded in the collaboration agreement, that a portion of the suit property bearing No. 1-C, Shashtri Gali, West Babbarpur, Shahdara Delhi, 110032, after carving out the share of the builder upon its



reconstruction, shall vest in the manner that the Upper Ground Floor shall vest jointly unto the petitioner/plaintiff and her husband i.e., respondent no. 1 and the first floor shall vest jointly unto the brother of respondent no. 1 namely Sh. Arun Kumar and his wife, who have been arrayed as defendant nos. 4 and 5 in the suit but they stood deleted from the array of the parties vide the order of learned Trial Court dated 24.02.2022.

19. It is further the case of the petitioner that upon completion of new construction on the suit plot by the builder and after apportioning the share of the builder, the remaining portion i.e., upper ground floor and the first floor was not distributed in terms of the family settlement and that the family settlement was totally violated and given a go by and instead the upper ground was transferred illegally and mala fide in favour of respondent no. 2 and respondent no. 3 posing himself as the exclusive and absolute owner of the said portion. By way of amendment, the petitioner intends to challenge the Relinquishment Deed executed by respondent no. 1 and 2 in favour of respondent no. 3.

20. It cannot be said that by allowing the proposed amendment by introducing paragraph nos. 10(A) to 10(G) and deleting paragraph no. 11 of the plaint, will cause injustice to the respondents. Further, the proposed amendment does not alter or substitute a new cause of action on the original *lis*. Beside, the suit was filed on 19.04.2014 and the amendment is sought on 13.05.2014 for challenging the document stated to be dated 05.01.2012, as such it cannot be said that on the date of seeking amendment, the relief of declaration claimed by the petitioner/plaintiff was barred by limitation. Further, the proposed amendment can be allowed in order to prevent multiplicity of proceedings and is also necessary to decide all the issues and



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disputes between the parties to the *lis*. Whether the contentions of the petitioner/plaintiff are correct or not would be a matter of evidence.

21. Insofar the amendment pertaining to technical aspects of the plaint are concerned, it is settled position of law that the court should avoid a hyper technical approach, and is ordinarily required to be liberal, especially where the amendment sought is at the initial stage of institution of the suit which in the present case, the application had been filed on the second date of listing of the suit.

22. In view of the aforesaid, I find that the petition merits being allowed, therefore, the orders impugned are not liable to be sustained and are set aside. Consequently, the petition along with pending applications stands allowed.

SHALINDER KAUR, J.

JULY 22, 2024
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