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

% *Date of decision: 01st October, 2024*

+ CM(M) 1354/2018

JAGDISHWAR KUMAR SETHI (DECEASED) THR LRS

.....Petitioner

Through: Mr. Amol Sharma, Mr. Anmol Mehta
and Mr. Aman Siwasiya, Advocates

versus

RAM PRATAP SINGH & ORS

.....Respondent

Through: Mr. P.N. Dhar, Advocate
Mr. Krishan N. Rana, Advocate for
R-12,1314,19,27,28
Mr. Priyanka Agarwal, Advocate for
R-15 & 20

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 16102/2024

1. The petitioner is aggrieved by dismissal of his application seeking amendment in the plaint.
2. The facts are little unusual herein.
3. Petitioner had filed a suit for recovery of possession and damages.
4. Such suit was directed against eleven defendants.
5. Initially, all the defendants, except defendant nos. 1 & 3, resisted the suit. Several defendants expired during the pendency of the suit and since no effort was made to bring on record their legal representatives, suit stood abated against defendant nos. 1, 5, 7, 9, 10 & 11.
6. After completion of pleadings, learned Trial Court framed seven



issues.

7. Issue no. 5 was to the effect ‘whether plaintiff was entitled for recovery of possession, as prayed for’.

8. The suit was eventually dismissed on 07.07.2009.

9. Said issue i.e. Issue No. 5 was decided against the plaintiff while observing that it was not clear to the Court as to for which part and portion of the suit property, the decree was to be passed.

10. Feeling aggrieved, plaintiff filed an appeal which was registered as RCA 91/2009.

11. Learned Appellate Court noted that suit had not been disposed of on merits and there was no discussion of the evidence and there was no observation as to whose evidence was reliable and truthful. Learned Appellate Court observed that learned Trial Court had dismissed the suit on the basis that the site plan was found to be vague. It observed that in such a situation, opportunity could have been given to the plaintiff/appellant to file fresh and correct site plan and, therefore, dismissal of the suit on the ground of *defective site plan* was not sustainable in the eyes of law.

12. Paras 17, 18 & 19 of the order of learned Appellate Court read as under:-

“These finding of the ld. Trial court on issue no. 5 and 6 shows that the suit has not been disposed off on merit and without discussing the evidence brought on record by the parties and which of the evidence was truthful. The trial court relying upon the vague site plan, dismissed the suit. In my view, under such circumstances, opportunity could have been given to the plaintiff/appellant to file afresh and correct site plan. Even otherwise, it was difficult for the plaintiff/appellant to get prepare the correct site plan, as whole of the suit property was under the possession of different persons and even the plaintiff



failed to implead the Lrs of some of the defendants and the proceedings abated in respect of those defendants. Hence, the appropriate remedy for the plaintiff was to get appointed a Local Commissioner accompanying with an Architect to get prepare the scaled site plan of the suit property and to ascertain as to which of the defendant is in possession of which portion of the suit property. Hence, the dismissal of the suit on the ground of defective site plan is not sustainable in the eyes of law. The findings of the ld. Trial court are perverse and not sustainable in the eyes of law. The suit was required to be disposed off on merit, as the parties have been able to lead evidence on record before the court and the evidence should have been appreciated and if the ld. Trial court found that the site plan is defective, it could have given an opportunity to the plaintiff to file the correct site plan of the suit property.

18. Under such circumstances, a legitimate claim of the plaintiff cannot be thrown out only on such technical grounds without deciding as to whether the plaintiff was entitled for the relief of damages and possession. Hence the impugned judgment and decree are set aside.

19. The ld. trial court is directed to give an opportunity to the plaintiff to file a correct site plan of the suit property, as per site and thereafter, the matter be decided on merit after hearing the parties. The parties are directed to appear before the ld. Trial court on dated 11.01,2016 at 2.00 p.m. The record of the ld. Trial court be returned. File be consigned to the record room.”

13. It, thus, becomes very much evident that the learned First Appellate Court had granted an opportunity to the plaintiff to simply place on record a correct site plan and once such site plan was placed on record, matter was to be decided on merits afresh, after hearing the parties.

14. Such order of the learned First Appellate Court was passed way back on 08.01.2016.



15. It seems that thereafter, when the matter was remanded back for the aforesaid limited purpose only, not only some other parties were impleaded in the suit, plaintiff also sought permission to amend his suit.

16. All in all, it was being assumed as the above suit has to be tried afresh.

17. The present petition has been filed by plaintiff who is aggrieved by order dated 06.08.2018 whereby his application moved under Order VI Rule 17 CPC has been dismissed.

18. Learned Trial Court has dismissed the aforesaid application for different reasons. It was of the view that the amendment, as sought, would change the nature of the suit. It also observed that the plaintiff could not amend *cause of action* and *prayer clause* and in the aforesaid backdrop, the application seeking amendment in the plaint was dismissed.

19. Fact remains that there was no discussion with respect to the aforesaid order passed by learned Appellate Court.

20. Manifestly, for all purposes, learned Appellate Court had remanded the matter back to learned Trial Court for a very limited purpose i.e. decision afresh on merits, after taking on record site plan.

21. No other permission of any kind whatsoever had either been sought or had been granted by the learned First Appellate Court.

22. Merely because there was some observation that it would have been better had a local commissioner been appointed would not mean that the learned Trial Court had given any permission to the petitioner herein to seek appointment of local commissioner and then to even seek amendment and impleadment of some other defendants. Moreover, even otherwise, the reference about local commissioner was merely to ascertain as to which of



the defendant was in possession of which portion of the suit property as no separate portion had been marked in the site plan indicating which portion was possessed by which defendant. It indicated those defendants only who were contesting the matter by that time. Direction to place fresh site plan was thought imperative by the learned Appellate Court as proceedings qua few defendants stood abated.

23. Learned counsel for petitioner submits that those defendants, who were earlier appearing before the learned Trial Court, have already sold off their portions and are not in picture any more. Even if above is assumed to be true, the scope of the appreciation for the learned Trial Court was very limited and constricted and the judicial discipline demanded learned Trial Court to have heard the arguments afresh, once the site plan was placed on record. There was no reason or occasion to have embarked on *de novo* trial as such. After all, it cannot be forgotten that the suit had been earlier dismissed and was sent back with simple direction to hear arguments again after taking on record correct site plan.

24. If for whatever reason, the petitioner/plaintiff was of the view that there was requirement of amendment or any fresh impleadment, it could not have been done unless it had been specifically permitted by the learned First Appellate Court.

25. In view of the above, there was no reason whatsoever for the plaintiff to have sought any amendment in the suit in the manner in the present peculiar backdrop.

26. Viewed thus, this Court does not find any merit in the present petition, *albeit*, for totally different reasons.

27. The petition is accordingly dismissed.



28. This Court expects that the learned Trial Court considers the true import of the directions contained in the order passed by learned Appellate Court and deals with the matter strictly within those confines.

29. Learned counsel for petitioner states that he would seek indulgence of the learned Appellate Court by moving appropriate application. Needless to say, the plaintiff is always at liberty to avail any remedy which is available and permissible under law.

30. The petition stands disposed of in abovesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 01, 2024/dr