
(2000) 05 DEL CK 0041

In the Delhi High Court

Case No : I.A. 1648 of 1998 in Suit No. 1290 of 1996

Anita Shinh Chauhan and Others

APPELLANT

Vs

Kedar Nath and Others

RESPONDENT

Date of Decision : 15-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2000) 86 DLT 12 : (2000) 54 DRJ 627 : (2000) 126 PLR 55 : (2000) 4 RCR(Civil) 645

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Geeta Luthra, for the Appellant; Sandeep Sethi, for the Respondent

Final Decision : Allowed

Judgement

S.K. Agarwal, J.—This order will dispose of plaintiff's application for amendment of the plaint under Order 6, Rule 17, Code of Civil Procedure, 1908 (for short CPC). The defendants have filed a reply pleading that the amendments are intended to delay the proceedings, and are not necessary for determining the real controversy between the parties.

2. The plaintiffs filed a suit against the defendants for partition of the House No. 6199, Gali No. 1, Block No. 1, Dev Nagar, Karol Bagh, New Delhi (for short suit property) alleging therein that plaintiff No. 1 is widow of late Sh. Sunil Chauhan, (son of defendant No. 2) and plaintiff Nos. 2 and 3 are their minor children. The defendant Nos. 1, 2 and 3, are grandfather, father and brother respectively of Sunil Chauhan, husband of plaintiff No. 1; that there was a joint Hindu family consisting of the defendants and plaintiff No. 1's husband who died on 25th April, 1996. The plaintiffs claim that they are entitled to 1/3rd share in the suit property and that plaintiffs are otherwise entitled to residence on the second floor of the suit property. The defendants in their written statement while denying the averments made in the plaint have, inter alias pleaded, that the suit property is a three-storey house, which was constructed by defendants 1 and 2

on a plot of land measuring 75 sq. yards which is in their names. The electricity and water connections are also in their names. The property was constructed by these defendants from their personal funds. No other person or a party has any right, title or interest in the said property. Now the plaintiffs have filed the application under Order 6, Rule 17, CPC seeking to amend the plaint by adding paras 3A, 13A and prayer Clause (bb). I have heard learned Counsel for the parties and have been taken through the record. Learned Counsel for the plaintiffs argued that amendments sought to be made do not in any way alter the nature or character of the suit and the amendments are necessary to determine the real controversy between the parties. Learned Counsel for the defendants has argued that on 27th August, 1997, ex parte injunction was granted in favor of the plaintiffs, was vacated by this Court and the dates of trial were fixed on 12th and 13th March, 1998. No evidence was produced, but, an amendment application was filed only with an intent to delay the trial; that the amendments sought to be made would cause prejudice, change the nature of the suit and would introduce an entirely new case, Therefore, the same should not be allowed.

3. In paras 3 and 4 of the plaint it was pleaded that there was a joint Hindu family consisting of the defendants 1 and 2 and late Sh. Sunil Chauhan, husband of plaintiff No. 1 and father of plaintiffs 2 and 3; they were owners of the suit property; thus a plea of joint Hindu family as well as joint ownership was set out in the plaint. By paragraph 3A, it is sought to be added that the suit property was purchased out of the nucleus of joint family funds and business; joint family was having gold and jewellery business in Tehsil Gujarat (near Sialkot), Gujarat, Pakistan. The nucleus of the said joint family business was used by the defendants to begin the new business after coming to Delhi; the defendants also received compensation from the Ministry of Rehabilitation, for the joint family property which were left behind in Pakistan from the said nucleus of joint family funds. House No. 2271, Gali-Master Shiv Parsad, Turkman Gate, Delhi was purchased. Subsequently, the suit property was purchased from DDA as a plot. The funds of the joint family were used to purchase the said plot and the property at Turkman Gate, were used for construction of three storeyed building on the said plot. The said property being HUF properties, the plaintiffs are entitled to partition being lawful co-owners of the same. plaintiff Nos. 2 and 3 as coparceners and plaintiff No. 1 being the wife of the deceased late Shri Sunil Chauhan are also entitled to a share in the said property. Thus by this amendment the plaintiff is only seeking to plead additional facts in support of the plea already taken in paras 3 and 4 of the plaint.

4. In para 13 of the plaint, the plaintiff had pleaded that the plaintiffs are otherwise entitled to a right of residence in the suit property, which they enjoyed being legal heirs of late Sunil Chauhan and that plaintiffs had been living in the said portion. In paragraph 13A what is sought to be pleaded is that the suit property is the matrimonial home of plaintiff No. 1 and home of plaintiffs 2 and 3 since their birth, and the plaintiffs are entitled to stay in the suit property as of right. In the alternative, it is pleaded that they are entitled to a right of residence

in the said suit property.

5. In prayer clause, paragraph (bb) what is sought to be added is an alternative prayer that the plaintiff No. 1 has a right of residence in the suit property as her matrimonial home and home of the plaintiff Nos. 2 and 3 being the children of plaintiff No. 1 and late Shri Sunil Chauhan and they have also a right of residence in the suit property.

6. The facts sought to be pleaded in additional paras 3A, 13A and prayer (bb) are in the nature of only an expansion of the pleas already pleaded in the plaint. It neither amounts to setting up of a new case nor it alters the nature of the suit. There is no merit in the submission of the learned Counsel for the defendant that their amendments would change the character of the suit or that it would amount to the setting up of new case.

7. Law with regard to the amendment of pleadings is well settled. An amendment should be generally allowed where the nature of the suit is not altered provided it does not cause prejudice or surprise the opposite party. The Supreme Court in *Suraj Prakash Bhasin Vs. Smt. Raj Rani Bhasin and Others*, .

"The liberal principles which guide the exercise of discretion in allowing amendments have been laid down in numerous decisions of this Court. Multiplicity of proceedings being avoided is one criterion. Amendments which do not totally alter the character of the action are readily granted while care is taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment of pleadings, The Court must be guided by the rule of justice expressed by the Privy Council in *Ma Shwe Mya v. Maung Po Haaung*, AIR 1992 PC 249; see P. 1283-84 of AIR Comm. CPC (1908) 9th Edn. Vol. 2.

All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is, Therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless, no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit."

8. As observed earlier above the amendments sought would not in any way alter the nature or character of the suit. Additional facts are sought to be pleaded are in respect of pleas already existing in the plaint. No injustice or prejudice would be caused to the defendants, if the amendments are allowed. The judgments cited by the learned Counsel for the defendant are not applicable to the facts of this case.

9. Learned Counsel for the defendant placed reliance on *K.C. Taneja Vs. Pramod Kumar Taneja*, and *Malwinder Kaur and Another Vs. Tej Pratap Singh*, . In the first case suit was for possession and mesne profits against defendant (son of the

plaintiff). The plaintiff sought to amend the plaint to the effect that defendant was not the son but adopted son of sister of the defendant and thus had no right or title to the suit property. In the other case, amendment in the plaint was sought to the effect that one of the heirs did not the issueless. It was found that if amendment was allowed it would change the nature of the suit, and would have far reaching consequences and repercussions for the parties. The amendment was disallowed. Ratio of these cases do not apply to the facts of the case in hand.

In view of the above, the application for amendment is allowed, subject to the payment of Rs. 2,500/- as costs. Let the amended plaint be taken on record.

IA stands disposed of.