

**(2012) 03 DEL CK 0339**

**In the Delhi High Court**

**Case No :** CM (M) 1269 of 2010 and CM No. 18125 of 2010 with CM (M) 40 of 2009 and CM No"s. 727/ 2009 and 8222 of 2009

Bal Bhagwan

APPELLANT

Vs

Balbir Singh and Others <BR> Balbir Singh and Others Vs  
Bal Bhagwan @ Nirankar Chela Onkaranand

RESPONDENT

**Date of Decision :** 28-03-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 6 Rule 17

**Citation :** (2012) 8 AD 197 : (2012) 189 DLT 258

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** Manish Vats in CM M 1269/2010 and CM No. 18125 of 2010 and Mr. J.K. Jain in CM M 40/2009 and CM Nos. 727/2009 and 8222/2009, for the Appellant; J.K. Jain, Advocate in CM (M) 1269/2010 and CM No. 18125 of 2010 and Mr. Manish Vats, Advocate in CM (M) 40/2009 and CM Nos. 727/2009 and 8222/2009, for the Respondent

## Judgement

Indermeet Kaur, J.—There are two orders which have been impugned before this Court. The petitioner Balbir Singh is aggrieved by the order dated 18.10.2008 whereby the application filed by him under Order 6 Rule 17 of the CPC (hereinafter referred to as the "Code") seeking an amendment in his plaint had been declined. The second order impugned before this Court is the order dated 3.3.2010. The petitioner is the defendant in the trial Court namely Bal Bhagwan; he is aggrieved by the finding returned by the trial Court allowing the impleadment of legal representatives of deceased Phool Singh on the application filed by the plaintiff under Order 22 Rule 3 of the Code. Both these petitions shall be disposed of by this common order.

2. Record shows that a suit for permanent injunction had been filed by the four plaintiffs; the averments in paras 1 & 2 of the plaint are to the effect that Shamlat Deh of Village Khampur Raya is the owner of the disputed land comprised in Khasra No. 1075/803/50 min measuring 4 bighas 13 biswas

situated in the revenue estate of village Khampur Raya, New Delhi. Further contention is that the plaintiffs are in possession of the said land and managing it. The plaint nowhere averred that the plaintiffs are in possession of the suit land as owners; contention is that they are managing the said land as co-sharer of Shamlat Deh. Prayer for injunction had been sought by the plaintiffs; contention was that the defendant was illegally and unauthorizedly interfering with the possession of the suit land; plaint was filed on 18.5.1999.

3. Written statement was filed disputing these contentions. It was stated that the possession of the suit land by the defendant is legal; they had become owners by way of adverse possession.

4. In the course of these proceedings, an application under Order 6 Rule 17 of the Code was sought to be filed. This application is dated 11.5.2007; averments of the plaintiffs in this application are that they are the recorded owners of the suit property; it is a Shamlat Deh land; in para 9 it has been stated that sometime in the end of July, 1990, the defendant in the absence of the plaintiffs had fixed an iron gate in the suit property which was inspite of the order of the status quo; application was filed for contempt. In para 12 it has been averred that to cut short the delay, the plaintiffs now want to amend the suit in order to incorporate the relief of possession and mesne profits; during the pendency of the suit, the defendants have now trespassed into the suit land and raised an illegal and unauthorized construction; in para 11-A, it has been averred that this trespass has taken place sometime in the year 2001.

5. Needless to state that this application had been contested.

6. The first impugned order dated 18.10.2008 had declined the prayer made for amendment and rightly so. The application for amendment can be allowed under Order 6 Rule 17 of the Code where the amendments sought to be incorporated would be necessary to resolve the controversy in dispute between the parties; delay and laches also have to be kept in mind.

7. The averments made in the present application show that it was sometime in the year 2001 that the defendant had trespassed into the land of the plaintiffs; as noted supra, this application was filed in May, 2007. There is no explanation for this inordinate delay in preferring this application. Delay and laches may not always be a consideration if the merits of the averments in the application would otherwise show that the amendment would in fact reduce the multiplicity of litigation and the amendment would throw light upon the controversy in issue. Rule of amendment is that it should be disallowed if it is otherwise going to change the nature of the suit. In this background, the averments made in the application have to be considered.

8. The plaintiffs by way of this application now seek to aver that they are the recorded owners of the suit property; this was not the averment made in the first plaint which was a suit for permanent injunction. In that suit, they had stated that the owner of the land is Shamlat Deh and the plaintiffs are in possession of

the suit land in a managerial capacity. The nature of the suit will accordingly change if this application is allowed. The delay in filing the present application i.e. to convert the suit for permanent injunction into a suit for possession and mesne profits, when admittedly the defendant had trespassed into the land in the year 2001 and the application seeking amendment for conversion of suit from permanent injunction to a suit for possession on the ground that the plaintiffs are now entitled to possession seven years after the alleged trespass is a delay which is unjustified and unexplained. The nature of the suit would also change. The impugned order disallowing the application for amendment in this background thus suffers from no infirmity.

9. Reliance by the learned Counsel for the petitioner upon Harish Kumar Chaudhary Vs. Vimal Wadhawan and Another, Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, is misplaced; there is no doubt that the Court can allow an amendment and the law of amendment should also be liberally construed and where it would advance substantial justice, procedural impediments should not come in the way. This is however not one such case. The impugned order dated 18.10.2008 suffers from no infirmity. CM(M) No. 40/2009 is dismissed.

10. The second petition is the grievance made by the defendant wherein the application filed by the plaintiffs seeking impleadment of legal representatives of the deceased Phool Singh had been allowed. Learned Counsel for the defendant is aggrieved by this order; his contention is that the suit for permanent injunction was a suit in personam; averments made in the plaint substantiate this submission as para 2 of the plaint clearly states that the suit has been filed by the plaintiffs who were managing the properties of Shamlat Deh which are owned by Shamlat Deh. It is thus clear that the right to sue of plaintiff No. 2 was a right only in his individual and personal capacity. The impugned order allowing the legal representatives of the deceased Phool Singh to be brought on record thus suffers from an infirmity. Reliance by learned Counsel for the respondent upon the judgment of 29 (1986) DLT 38 (SN)=1985 RLR 544, Munni Devi v. Mun. Corporation is misplaced; this was a case where a suit for injunction had been filed by the plaintiff against the MCD for grant of license to run its business; after the death of original plaintiff, the admitted legal representatives of the deceased plaintiff had a right to continue with this litigation as the original suit had sought a restraint against the MCD from removing or lifting of water trolleys of the plaintiff from the site which right the plaintiff had inherited after the death of the original plaintiff and as such it was in these circumstances, the Court had noted that the right to sue survives. This is not so in the instant case. The plaint clearly discloses that the plaintiffs were managing the affairs of the Shamlat Deh. This was a personal action of the plaintiffs. Impugned order dated 3.3.2010 is accordingly set aside. Both the petitions are disposed of in the above terms. Petitions disposed of.