

(1995) 03 DEL CK 0086

In the Delhi High Court

Case No : Interim Application No. 4960 of 1990 and Suit No. 1101 of 1977

Chetan C. Bijlani

APPELLANT

Vs

L.C. Bijlani

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

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

Citation : (1995) 1 AD 1432 : (1995) 33 DRJ 231

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Nandini Sahni and S.K. Luthra, for the Appellant;

Judgement

Jaspal Singh, J.

(1) In the year 1977 the plaintiff instituted this suit for partition and accounts. Issues were framed in December, 1979. In 1990, the plaintiff moved an application for amendment of the plaint. It is seeing its disposal by this order.

(2) What is the amendment sought? I will venture to answer it a little later. First, let us see the claim of the plaintiff as originally laid. He claimed that the policy of the Ministry of Rehabilitation being to allot one room set to a person having a family of not exceeding five members and two room set to a person having a family exceeding that number, the suit property (a two room set) was allotted to the defendant on rental basis. In 1959 defendant No.1 purchased it from the said Ministry in his own name but agreed that it shall belong "equally" to himself and the plaintiff and that the plaintiff had contributed "one-half money towards the sale consideration." and that later in the year 1967 when a new construction was raised, at that time too, it was agreed to between the parties that "the defendant will raise loan of about Rs.17,000.00 from the Government and the remaining costs will be provided, if any, by the plaintiff". The plaintiff claims that after the construction, the defendant realised the rental income as compensation "towards the cost of construction". In short thus the plaintiff set up the claim that he was

the joint owner of the property Along with the plaintiff.

(3) Time now to refer to the application for amendment of the plaint.

(4) The plaintiff now seeks to take the plea that the parties to the suit Along with their parents constituted a Joint Hindu Family and that the suit property though got allotted in the name of the defendant as he had a family comprising of more than five members, it in fact belonged to the entire family with equal "right, title and interest".

(5) Should the amendment application be allowed? The learned counsel for the defendants says no. As per him the application has been moved too late in the day. He further says that the plaintiff is seeking to change the very character of the suit.

(6) We all know by now that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rule of procedure. The court always gives leave to amend the pleadings of a party, "unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs". (See: Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, . And, in the case before me, it cannot be said that the plaintiff is acting mala fide. It also cannot be said that the plaintiff has caused such injury to his opponent which cannot be compensated by way of costs. I do also feel that the amendment sought would not fundamentally alter the cause of action. He would be claiming practically the same relief but not in the capacity of a joint owner but on the ground that the property belongs to a joint family of which he is a member. What may be of equal significance is the fact that the question of limitation is not involved.

(7) True, the application has not been moved with promptitude. It saw the light of the day only after the suit had been listed for final disposal. But then has it not been the approach of the courts to allow amendment, however negligent or careless may have been the first omission, and however late the proposed amendment? If I am not wrong, in L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., the amendment was allowed at the Supreme Court stage. Surely then, delay itself does not affect the power of the court to allow amendment if it will secure proper administration of justice.

(8) The result is that I allow the application for amendment on conditional payment of Rs.3000.00 as costs.