

(2015) 02 DEL CK 0194
In the Delhi High Court
Case No : CS(OS) 93/2012

GCG Transglobal Housing Project Pvt. Ltd.	APPELLANT
Vs	
Surakshit Exports Private Ltd. and Others	RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

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

Citation : (2015) 02 DEL CK 0194

Hon'ble Judges : Jayant Nath, J.

Bench : Single Bench

Advocate : Raman Kapur, Senior Advocate and Manish Kumar, for the Appellant;
T.K. Ganju, Sr. Adv., Dinesh Rastogi and Manish Ahluwalia, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jayant Nath, J.

IA No. 12305/2013 (under O.6 R. 17 CPC) in CS(OS) No. 93/2012

1. This is an application filed by the plaintiff under Order 6 Rule 17 CPC for amendment of the plaint.

2. The plaint is filed seeking the following reliefs:-

"(i) pass a decree in favour of the plaintiff and against the defendants permanently injunction the defendants, their agents, representatives, assignees acting for and on their behalf directly or indirectly interfering with or obstructing the exclusive possession of the plaintiff over the suit property described in Schedule "A" to the plaint;

(ii) pass a decree of mandatory injunction against the defendants particularly defendant No. 6 to remove himself and any of his agents, servants representatives, assignees acting for and on his behalf from the suit property described in Schedule "A" to the plaint;

(iii) pass a decree in favour of the plaintiff that the plaintiff is entitled to collect the original title documents to the suit property from the Registry of this Hon"ble Court as the same is deposited in Suit 1077 of 2000 or alternatively, direct the defendant No. 6 and/ or all defendants to hand over the title documents to the suit property described in Schedule "A" to the plaint;"

3. The plaint has a chequered history. The suit first came up for hearing on 11.01.2012. On that date itself the Court noted that unnecessary averments have been made in the present suit giving the entire history of some sequence of facts which appears to be totally immaterial and irrelevant to determine the controversy involved between the parties. The Court directed that the irrelevant averments be struck off by the plaintiff and amended plaint be filed within a period of one week.

4. On 05.03.2012 the defendant filed IA No. 4277/2012 pointing out that instead of striking off the irrelevant averments in the plaint, the plaintiff has in fact changed the nature of the suit itself as well as the prayer para itself. A direction was passed against the plaintiff to carry out the directions as contained in order dated 11.01.2012 failing which exemplary cost shall be imposed upon the plaintiff.

5. On 22.07.2013 while dealing with IA Nos.4277/2012 and 4278/2012 filed by the defendants, this Court noted that certain changes have been done by the plaintiff in the amended plaint which are not in the initial plaint like the relief of redemption has been added by the plaintiff in the amended plaint. The amended plaint was directed to be taken off the record and the plaintiff was permitted to take appropriate steps with regard to the original plaint and ensure that all the irrelevant averments as intended by order dated 11.01.2012 do not form part of amended plaint. The two applications were disposed of.

6. On 28.07.2014 this Court noted that the amended plant is still not on record and subject to the payment of cost of Rs. 2 lakhs granted two week"s time to the plaintiff to file the amended plaint. Against the said order dated 28.07.2014 the plaintiff filed FAO (OS) 366/2014. The same was dismissed by the Division Bench vide order dated 13.08.2014. The Division Bench however noted that in a useless and prolix pleadings it took the plaintiff 57 paragraphs to plead a simple case, namely that the plaintiff was to simply seek redemption of the mortgage. Yet the Division Bench noted that all and sundry averments unconnected with the real issue were pleaded.

7. Coming now to the application for amendment which has been filed earlier. By the present application the plaintiff submits that in the amended plaint filed, the relief of redemption has been added but seeks formal order for allowing the said amendment on record.

8. Learned senior counsel for the plaintiff has urged that the Division Bench in its order dated 13.08.2014 has already held that the plaintiff was to simply seek redemption of the mortgage and that is the only prayer which is sought to be

added in the plaint.

9. Learned senior counsel appearing for the defendant has strongly argued that the present application is not maintainable. He submits that the proposed amendment completely changes the nature of the suit. A suit for mandatory and permanent injunction is sought to be converted to a suit for seeking redemption.

10. Reliance is placed on *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others*, "*Bharat Karsondas Thakkar Vs. Kiran Construction Co. and Others*", "*State of Madhya Pradesh Vs. Union of India (UOI)*" and *Another*, and *Kewal Kishan Vs. Delhi Development Authority*, " to contend that the legal position is that an amendment which tends to change the nature of the suit cannot be permitted. He submits that the suit is filed for a decree for injunction and mandatory injunction and this cannot be converted into a suit for redemption of mortgage. It is further urged that the plaint is vague and seeks to make contradictory pleas.

11. Learned senior counsel appearing for the plaintiff in rejoinder submits that the nature of the suit undergoes no change. There is no amendment sought in the main body of the plaint. Relying on the facts already pleaded in the plaint only an additional prayer for redemption is sought to be added.

12. Reference may be made to the various judgments relied upon by the learned senior counsel for the defendant. In "*Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors.*" (supra) . The Hon"ble Supreme Court in para 67 held as follows:-

"67. On critically analyzing both the English and Indian cases, some basic principles emerges which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

13. Similarly in "*Bharat Karsondas Thakkar vs. M/s. Kiran Construction Co. and Ors.*" (supra) . The Hon"ble Supreme Court held as follows:-

"21. ----- Even if the bar of limitation is not taken into account, the plaintiff, namely, the respondent No. 1 herein, is faced with the ominous question as to whether the amendment of the pleadings could have at all been allowed by the High Court since it completely changed the nature and character of the suit from being a suit for specific performance of an agreement to one for declaration of title and possession followed by a prayer for specific performance of an agreement of sale entered into between its assignee and the vendors of the assignees."

14. The legal position hence is quite clear. An amendment which changes the nature and character of the suit may not normally be permitted to be carried out.

15. The issue is the amendment which is now sought to be carried out by the plaintiff changes the nature and character of the suit.

16. A perusal of the plaint shows that it is averred that the plaintiff purchased the suit property as per different sale deeds and agreement to sell executed in 1999. It is further averred that for purposes of carrying out mutation in the land revenue record, the title paper of the suit property were handed over to defendant No. 6 who has turned dishonest. The original title deeds are said to have been deposited with this court in the suit No. 338/2000. Various litigations have been filed by the defendants against the plaintiff. One of such suits was CS(OS) No. 1077/2000. The suit was filed seeking payment of Rs. 2,04,76,219/- per annum from the date of the suit to that of payment and in default foreclosure and possession in pursuance thereto and in the alternative sale of the property in question. The defendants themselves had sought foreclosure of the so-called mortgage. In fact the title of the suit reads "Suit by Mortgagee for mortgage for foreclosure and sale or in the alternative recovery of Rs. 2,04,76,219/-". In fact in that suit it was the own case of the defendants that they had advanced a sum of Rs. 1,69,95,000/- to the plaintiffs. The plaintiffs are said to have created a mortgage by depositing the documents of title on 22.12.1999 being the sale deeds in respect of immovable property being 15 acres with intent to create a security for repayment of the amounts said to have been advanced by the defendants. This was the own admitted case of the defendant which was filed against the plaintiff herein. In compliance of order dated 23.03.2004 in that suit, the plaintiff deposited Rs. 1,69,95,000/- in this court. However, the defendants/ plaintiffs therein filed an application for withdrawal of the suit which application was allowed. In this background the present suit has been filed seeking the relief as stated above.

17. I may also note that against the order dated 28.07.2014 passed by this court permitting the plaintiff to file the amended plaint within two weeks subject to payment of costs of Rs. 2 lacs, the plaintiff had gone in appeal. The Division Bench on 13.08.2014 in FAO(OS) 366/2014 noted as follows:-

"1. In a useless and prolix pleading, it took the appellant 57 paragraphs to plead a simple case. The simple case was that in CS(OS) No. 1077/2000 filed by the

respondent/defendants against the appellant seeking foreclosure of a mortgaged, the appellant agreed to pay the full amount evidenced by order dated September 21, 2011 passed in the said suit. There upon the defendants somersaulted notwithstanding the appellant depositing the partial amount payable. As per the appellant it was willing to pay the balance amount.

2. In other words the appellant who was the plaintiff was to simply seek redemption of the mortgage.

3. All and sundry averments unconnected with the real issue were pleaded."

18. Hence a conclusion was drawn by the Division Bench that all that was required to be pleaded in a plaint was a simple relief of redemption of mortgage which the plaintiff has failed to do and has needlessly complicated the facts and reliefs.

19. At best it was a case of clumsy drafting. The foundation for the relief of redemption of mortgage has already been averred in the plaint. There is no merit in the contention of the defendants that the nature of the suit gets changed.

20. The Supreme Court in the case of Abdul Rehman and Another Vs. Mohd. Ruldu and Others, held as follows:-

"17. In Pankaja v. Yellapa, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties."

21. In my opinion the above judgment would be applicable to the facts of the present case. The factual basis for the relief of redemption has already been laid down in the plaint. The plaint has already been somewhat commented upon by the Division Bench in its order dated 13.08.2014 in FAO(OS) 366/2014.

22. It is quite clear that the amendment sought is imperative for proper and effective adjudication of the case. The proposed amendment cannot be said to cause a fundamental change in the nature of the case.

23. In the light of the above, the present application is allowed subject to cost of Rs. 25,000/-.

24. The defendants may file written statement to the amended plaint within 30

days from today.

25. List before the Joint Registrar on 07th April, 2015.