

(1995) 04 DEL CK 0033

In the Delhi High Court

Case No : Interim Application No. 3153 of 1994 and Suit No. 890 of 1992

Lok Kalyan Samiti

APPELLANT

Vs

Jagdish Prakash Saini and Others

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Citation : (1995) 33 DRJ 290

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : P.N. Lekhi, P.S. Khera, Aman Vaccher and O.C. Jain, for the Appellant;

Judgement

N.G. Nandi, J.

(1) By this application, the plaintiff seeks to amend the suit valuation for the purpose of court fees and jurisdiction to Rs.5,05,000.00 and also prays to amend the plaint to make up the deficiency/difference in the court fees already paid and now become payable on revaluation.

(2) The suit as framed is value at Rs.1,05,000.00 for the purpose of court fees and jurisdiction.

(3) That the amendment Act raising the pecuniary jurisdiction of the District Court on its Original Side to Rs.5,00,000.00 being 4 of Delhi High Court (Amendment) Act, 1991 came to be passed and pursuant to the notification by the High Court on its administrative side, under the Amendment Act of 1991 suits below the valuation of Rs.5,00,000.00 except certain categories of matters excluded from the purview of the said notification, came to be transferred.

(4) After the passing of the aforesaid notification by this High Court on its administrative side, the present suit became liable to be transferred to the District Court, Delhi. At that juncture the present amendment application under Order VI Rule 17 of the CPC came to be filed by the plaintiff seeking to revise/

amend the suit valuation, for the purpose of court fees and jurisdiction, to Rs.5,05,000.00 so as to retain/attract the pecuniary jurisdiction of the High Court.

(5) I am conscious that when the proposed amendment would prejudice the interest of the party opposing it or when the nature of the suit is altered or when the proposed amendment seeks to take away the right accrued by virtue of the pleadings of the party seeking amendment in the pleading, then only amendment cannot be granted. I am also conscious that the rules of procedure are meant to advance justice and not to impure the same.

(6) In the instant case I am not inclined to grant the proposed amendment; firstly for the reason that under Rule 17 of Order Vi of the CPC the Court would allow amendment in the pleadings at any stage of the proceedings when all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. In the instant case, as far as the valuation for the purposes of court fees and jurisdiction is concerned, that can have nothing to do with determination of the real questions in controversy between the parties. Irrespective of the proposed amendment the real question in controversy could be decided by the District Court as well since the suit as framed is valued at Rs.1,05,000.00 for the purpose of court fee and jurisdiction. It cannot be said that only by permitting the proposed amendment and thereby revising the suit valuation for the purpose of court fees and jurisdiction to Rs.5,05,000.00 the real question in controversy between the parties can be decided by the Court. In other words amendment or no amendment, the real question in controversy between the parties would remain as revealed from the pleadings on record and for deciding the same proposed amendment cannot be regarded necessary. The second reason as to why I am not inclined to grant the proposed amendment is that it smokes of malafides for the reason that by the proposed amendment the jurisdiction of the District Court by virtue of the Amended Act 4 of the Delhi High Court (Amendment) Act, 1991 is sought to be taken away. In other words the proposed amendment is only to circumvent the Amended Act 4 of 1991 and with a view to have this matter on the Original Side of this High Court, the amendment is sought which is quite obvious. The grant of the proposed amendment would defeat the very purpose and object of the Amended Act 4 of 1991 and the position would be the same just it prevailed before the Amended Act 4 of 1991 and because the purpose of the Amended Act is sought to be frustrated by the proposed amendment I regard the same as wanting bonafides. It need hardly be said that the amendment sought under Rule 17 of Order Vi of the CPC has to be bonafide besides other requirement of Rule 17 and the principles of law enunciated with regard to the grant of the amendment in the pleadings as aforestated.

(7) It may also seen that this is not a case of under valuation of suit for the purpose of court fees and jurisdiction, which amendment in the plaint has to be necessarily granted. Here the suit valuation for the purpose of court fee and

jurisdiction is sought to be revised/amended because the plaintiff has the purse long enough to afford payment of court fee on the valuation of Rs.5,05,000.00 as the High Court will have the pecuniary jurisdiction over the case where in the suit valuation exceeds Rs.5,00,000.00. And the possibility cannot be ruled out of falling this burden on the defendant, in the event of ultimate decree in favor of the plaintiff.

(8) In this view of the matter, the proposed amendment being devoid of merits would be liable to be rejected and the application dismissed. Ordered accordingly. Suit No.890 of 1992 List the matter before the Joint Registrar on for further proceedings in accordance with law.