

(1990) 10 DEL CK 0030

In the Delhi High Court

Case No : I.A. No. 6517 of 1990 in S. No. 1120 of 1988

Miss. Vidushi Duggal and others

APPELLANT

Vs

Smt. Darupadi Devi and another

RESPONDENT

Date of Decision : 31-10-1990

Acts Referred:

Citation : (1990) 2 ILR Delhi 503 : (1991) 189 ITR 474

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : Deokinandan, Adv K.M.L. Majele, for the Appellant;

Judgement

P.N. Nag, J.—In this application under Order VI, rule 17 of the CPC filed by the plaintiff, the plaintiff/petitioner seeks to amend the plaint by incorporating certain amendments in the plaint mentioned by him in the application. These amendments have been necessitated by passing of an Act by Parliament known as "Benami" Transactions (Prohibition) Act, 1988, "(hereinafter referred to as the Act). In substance, the plaintiff wants to raise an additional ground in the plaint that defendant No. 1 was holding the immovable property in question as a trustee for plaintiff No. 1 in a fiduciary capacity and for the benefit of plaintiff No. 1 or the plaintiffs. All the amendments sought for are in consequence of such ground.

2. The defendants have opposed this amendment. In fact, Mr. Daljit Singh, counsel appearing for the defendants, has vehemently contended that this application of the plaintiff should not be allowed as such as the amendment introduces a new cause of action and sets up a new case altogether. Further, such an amendment is not necessary for the purpose of determining the real questions in controversy between the parties.

3. I have given careful consideration to the submissions of learned counsel for the defendants but I regret, I am unable to accept his contentions. Since, at time of filing of the suit, the Act was not enacted by parliament and in fact it never

existed, such an amendment in the plaint could not be visualized by the plaintiffs at that stage while drafting the plaint could not be visualized by the plaintiffs in the application incorporates only an additional ground in a suit and does not introduce a new cause of action in any way or sets up a new case.

4. Further, I am of the opinion that the amendments sought for are infact necessary for the purpose of determining the real question in controversy between the parties. It is a well-settled principle of law that the amendment sought for should always be allowed if it is necessary for determining the real question in controversy and the other party could be compensated with costs. Since I find that the amendment sought for is necessary for determining the real point in controversy between the parties, and the defendants can be compensated with costs, there cannot be any objection to allowing the amendment. Therefore, the contention of learned counsel for the defendants fails.

5. In the light of the above discussions, I allow the amendment subject to payment of Rs. 2,000 as costs to be paid by the plaintiffs to the defendants within two weeks. The payment of costs shall be a condition precedent for allowing the amendment.

6. The amended plaint which has already been filed by the plaintiffs be taken on record after the costs are paid as directed.

7. The defendants shall file a written statement to the amended plaint within four weeks from today. Replication, if any, be filed within three weeks thereafter.

8. I.A. No. 6517 of 1990 stands disposed of.

9. List the matter before the joint Registrar on december 13, 1990.

10. All other pending applications be listed before court for arguments on January 11, 1991.