
(1993) 07 DEL CK 0050

In the Delhi High Court

Case No : Interim Application No. 13646 of 1992 and Suit No. 1377 of 1979

Roma Sanyal

APPELLANT

Vs

S.K. Bagari

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

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

Citation : (1993) 3 AD 451 : (1993) 51 DLT 664 : (1999) 27 DRJ 15

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : I.S. Mathur, M.L. Chhibbar and V.B. Andley, for the Appellant;

Judgement

-Sat Pal, J.

(1) In this case the plaintiff has filed a suit for grant of a decree for specific performance of agreement for the transfer of the first floor, barsati and the staircases up to the top floor and the portion below the staircase on the ground floor of the building situated on E-885, Chittranjan Park, New Delhi along with all consequential and incidental rights. The issues were framed on 22nd March, 1983. The case was fixed for trial twice. The dates of trial had to be cancelled on the first occasion at the instance of the plaintiff. On the second occasion the learned counsel for the defendant submitted on 13th November, 1992 that the valuation of the suit for the purposes of jurisdiction being fixed at Rs. 1.62 lakhs, the suit was likely to be transferred to the lower court and as such its dates of trial which were fixed from 13th November, 1992 to 26th November, 1992 were cancelled. Now the dates of trial are yet to be fixed.

(2) The present application has been filed on behalf of the plaintiff under Order 6 Rule 17 read with Section 151 of the CPC (for short called "CPC") for amendment of the plaint. In this application the plaintiff has sought the amendment of para 2 of the plaint. In terms of the plaint, para 2 reads as under:-

"2. THAT the defendant constructed only the ground floor portion of the house on

the aforesaid plot but was unable to construct the first floor, Barsati and the staircases up to top floor on the said plot. The defendant, Therefore, approached the plaintiff with a request that the plaintiff may complete the construction of all the remaining portion of the house, namely, the first floor, Barsati and stair cases up to top floor."

(3) The plaintiff has sought the deletion of the present para 2 of the plaint and has prayed for the substitution of the said para with the following paragraph:-

"PARA2 - That the defendant constructed the ground floor and a portion of the first floor of residential building on his plot No.E-885, E.P.D.P. Colony, but was unable to complete the remaining portion of first floor, barsati and remaining masonry work of staircase up to top floor. The defendant, Therefore, approached the plaintiff with a request that the plaintiff may complete the construction of all the remaining portion of the house, namely, the first floor, barsati and staircases up to top floor."

(4) Mr. Ishwar Sahai, the learned Senior Counsel, appearing on behalf of the plaintiff drew my attention to the alleged memorandum of agreement dated 18th November, 1974 which has been mentioned in para 3 of the plaint. He submitted that in para 2 of the aforesaid agreement it has clearly been stated that the work to be carried out through the contractor is the completion of remaining portion of the first floor and barsati also the remaining masonry work of staircases up to the roof level above it, but in para 2, of the plaint it has. inadvertently been stated that the defendant was unable to construct the first floor, barsati and the staircases up to to the top floor instead of stating the remaining portion of the first floor and barsati and the remaining masonry work of staircases. He, Therefore submitted that the amendment sought is for staling the facts correctly with reference to the agreement in question and is necessary for the proper adjudication of the case. The learned counsel submitted that defective pleadings are curable if the cause of action sought to be brought out was not ab initio completely absent. He, Therefore, contended that since by this amendment no new cause of action is being introduced, the amendment should be allowed by this Court. In support of this contention he placed reliance on a judgment of the Supreme Court in Ganesh Trading Co. Vs. Moji Ram, . . .

(5) MR.ANDLEY, learned counsel appearing on behalf of the defendant vehemently opposed the application for amendment. He submitted that the real point involved in the case is as to whether the alleged agreement dated 18th November, 1974 between the parties ever existed, or it was only a sham agreement. He further submitted that the amendment sought for was not necessary for the proper adjudication of the case. He also submitted that the application was mala fide. In this connection he submitted that the issues were framed as back as on 22nd March, 1983 and by seeking this. amendment, the plaintiff was harassing the defendant and the dates of trial were fixed twice but the same had to be cancelled by this Court at the instance of the plaintiff. He, Therefore, contended that. the application for amendment should be dismissed

with costs. In support of his contention he placed reliance on a Division Bench judgment of this Court in *Parma Nand Ahuja vs. Satya Deo Ahuja*. AIR 1973 Del 190 and a judgment of Punjab and Haryana High Court in *Mool Raj Jain vs M/s. Jayna Engineering Works*, 78PLR(1976) 980.

(6) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. Though the present application has been moved by the plaintiff at a belated stage, the amendment sought is only with regard to the description work to be carried out which according to the plaintiff has not been correctly stated in para 2 of the plaint, and in the amended para 2, the plaintiff wants to mention the same correctly in terms of the alleged agreement dated 18th November, 1974. The said agreement has been referred to in para 3 of the plaint wherein it has been alleged that the plaintiff had deposited with the defendant a sum of Rs.60,000.00 as security for fully carrying out the terms and conditions of the said agreement. In view of these facts, it cannot be said that the amendment sought in this application is not relevant and necessary for the proper adjudication of the matter. No new cause of action is sought to be brought out by this amendment. Having regard to these facts and the law laid down by the Supreme Court in the case of *A/A. Ganesh Trading Co. (supra)*, the application has to be allowed.

(7) The ratio of the judgment in the case of *Mool Raj Jain (supra)* is not relevant to the facts of the present case as the amendment sought in that case was held as not relevant on the point involved in that case. Similarly, the observations made in the case of *Parma Nand Ahuja (supra)* are of little assistance to the defendant since in that case the proposed amendments were found beyond the subject matter in controversy between the parties. But in the present case as stated herein above, the amendment sought is relevant for proper adjudication of the case.

(8) In view of the above discussion the application is allowed subject of payment of Rs.1000.00 as costs.

(9) Let written statement to the amended plaint be filed within three weeks. Replication, if any, within two weeks thereafter.