
(2006) 04 DEL CK 0020

In the Delhi High Court

Case No : IA No. 2954 of 2006 in CS (OS) No. 91 of 2006

Shri Gurcharanjeet Singh Anand

APPELLANT

Vs

Shri Pritam Singh Anand and Another

RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17, Order 7 Rule 7, 151

Citation : (2006) 04 DEL CK 0020

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Valmiki Mehta and Jasmeet Singh, for the Appellant; Dalip Kapoor, for Defendant No. 1, S.P. Mital and Nitin Nayyar for Defendant No. 2, for the Respondent

Judgement

Anil Kumar, J.—This is an application by the plaintiff under Order VI Rule 17 read with Order VII Rule 7 and Section 151 of CPC for amendment of plaint to incorporate the subsequent facts and to rectify the typographical mistake in the plaint.

2. The plaintiff/applicant contended that he filed the suit for perpetual injunction seeking a restraint against the defendants from creating any third party interest in respect of the suit property No. N-120, Panch Shila Park, New Delhi and the restraining the defendants from dispossessing plaintiff from the portion in his occupation in the suit property.

3. The plaintiff has contended that the property bearing No. N-120, Panch Shila Co-operative House Building Society was constructed by his father after the allotment of the plot. The father of the plaintiff, Sardar Hanbans Singh Anand, died on 2nd July, 1984 and thereafter the property was nominally mutated in the name of defendant No. 2.

4. Reliance has been placed on an oral settlement arrived at between the plaintiff

and the defendant under which the property had to be shared equally by the plaintiff and the defendant No. 1 after the demise of defendant No. 2. A writing to that effect has also been produced by the plaintiff dated 6th August, 2004

5. On an application of the plaintiff for interim order, the defendants were restrained from creating third party interest in respect of the property and they were also restrained from dispossessing the plaintiffs by order dated 17th January, 2006.

6. In para 13 of the plaint, plaintiff categorically contended that he is not seeking any relief against the defendant No. 2 as she is only a proforma party and consequent thereto the order dated 17th January, 2006 was modified by order dated 2nd March, 2006 holding that the order dated 17th January, 2006 restraining defendants from creating any third party rights and from dispossessing the plaintiff from the suit property shall be against the defendant No. 1 only and not against the defendant No. 2.

7. The plaintiff/applicant now contends that in para six of the plaint by inadvertence the date of oral settlement arrived at between the parties was not mentioned which was reduced into writing. It is also averred that instead of 'mother' word 'brother' was mentioned by inadvertence.

8. The plaintiff Therefore wants to amend para 6 of the plaint to rectify the typographical mistake by correcting the word "brother" by replacing it with the word "mother".

9. The other amendment sought by the plaintiff is that on 27th February, 2006 when he came to India after coming to know that the police had registered a Kalandra against him for which he has to appear before the South Executive Magistrate on 28th February, 2006, it was revealed to him that defendant No. 1 has been taking advantage of his absence and on account of undue influence, he was able to get the kalandra registered against him and he also got a statement of defendant No. 2 recorded where serious allegations have been made by defendant No. 2 against the plaintiff in order to deprive him of his share in the family settlement.

10. The plaintiff/applicant contended that initially since there was no threat held by defendant No. 2 to him, he had not pressed any interim order against the defendant No. 2, however, in view of the subsequent threats held out to him, he want to amend the plaint by incorporating paras 9a and 9b in the plaint incorporating the facts about the subsequent event of registration of kalandra against him and the threats by defendant No. 2 to the plaintiff. The plaintiff/applicant, in the facts and circumstances, has also sought specific relief against the defendant No. 2 and in the circumstances amendment has also been sought in the prayer clause.

11. The plaintiff/applicant contended that the amendment sought is necessary for determination of real controversies between the parties and the amendment

does not tantamount to withdrawal of any admission made by him and is necessary in the facts and circumstances and no prejudice shall be caused to the defendants, if the plaintiff is allowed to carry out the typographical correction in para 6 of the plaint and incorporate the subsequent events and amend the prayer clause by incorporating relief against the defendant No. 2 also.

12. The learned senior counsel, Mr. Mehta, has also relied on Suraj Prakash Bhasin Vs. Smt. Raj Rani Bhasin and Others, . M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., Vineet Kumar Vs. Mangal Sain Wadhera, and Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, , Shikharchand Jain v. Digamber Jain Praband Karini Sabha and Ors. to contend that procedural justice require that the events and development subsequent to the institution of the proceedings must be taking into consideration in appropriate cases to promote substantiate justice and the court with regard to events and developments may allow the amendment in the interest of justice.

13. The application is contested by the defendant No. 2 who has filed a reply contending that plaintiff is not in exclusive possession or occupation of any portion of the suit property much less the portion shown in the red colour in the site plan. The non-applicant also contended that the third party interest can be created in the suit property by her without the consent and/or approval of the plaintiff. The non-applicant contended that she is the sole and exclusive owner of the property and the plaintiff has no right, title or interest of any nature whatsoever in the suit property and the application of the plaintiff is based on the false and misconceived allegations.

14. The defendant No. 2/non-applicant also asserted concealment of material facts by the plaintiff contending that she has already entered into an agreement to sell dated 4th September, 2005 for the sale of the property with M/s. Oceanic Homes Pvt. Ltd, D-6/26, Vasant Vihar, New Delhi and plaintiff himself is one of the attesting witnesses of the agreement to sell which fact has not been disclosed by the plaintiff.

15. Mr. S.P. Mital, learned Counsel for the defendant No. 2 also relied on S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , S.P. Chengalvarya Naidu v. Jagannath and Ors. to contend that the judgment and decree obtained by fraud to be treated as nullity and can be questioned even in collateral proceedings and the principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes instrument of fraud in the hands of dishonest litigants. "The learned Counsel contended that since the plaintiff himself is an attesting witness to the agreement to sell executed by defendant No. 2, he is not entitled for any amendment.

16. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by

various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

17. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. The Courts in numerous cases have held that the dominant purpose of allowing the amendment is to minimize the litigation, Therefore, if the facts of the case so permit, it is always open to the court to allow applications for amendment.

18. Allowing the application for amendment in Sushil Kumar Gupta Vs. Anil Kumar Gupta, it was held that amendment necessitated because of subsequent events should be allowed as no serious injustice or irreparable loss is caused to the other side as the amendment applications are to be allowed to avoid multiplicity of litigation.

19. A Division Bench of this Court in M/s. Bajaj Auto Limited Vs. Vikram Singh Mehta and Another, had held that introduction of subsequent events, resulting into different approach or set of ideas claiming same relief should be permitted in order to shorten the litigation and discretion exercised by a Judge to allow amendment in order to incorporate subsequent events cannot be termed arbitrary, perverse or irregular.

20. It is settled law that the correctness of the plea is not to be decided at the time of considering whether the amendment should be allowed or not. The plaintiff in the original plaint in para 13 had categorically stated that defendant No. 2 is the mother of the plaintiff and has been imp leaded only as a proforma party and no specific relief has been sought against her, however, on account of registration of kalandra against the plaintiff where the defendant No. 2 has also given statement against the plaintiff, the plaintiff wants relief against his dispossession against the defendant No. 2 also and that the defendant No. 2 is also not entitled to create third-party interest in the property.

21. Along with the application for amendment, the plaintiff has also filed an application under Order XXXIX Rule 1 and 2 being is No. 2955 of 2006 seeking an interim relief categorically against the defendants including defendant No. 2 that they should not create any third party interest and should not dispossess the plaintiff. In view of the assertions made by the defendant No. 2 that she has already entered into an agreement to sell where plaintiff is also an attesting witness, merely on account of allowing the amendment the plaintiff shall not be

entitled for an interim order against defendant No. 2 restraining her from creating any third party interest in the property.

22. Considering the averments made by the plaintiff, it is inevitable to infer that the amendments sought by the plaintiff are necessary for determination of real controversies between the parties and by mere amendment to the plaint, at this stage, as even the issues have not been framed, no prejudice shall be caused to the defendant No. 2.

23. Considering the entire gamut of circumstances, the application for amendment of the plaint is allowed, subject to a cost of Rs. 10,000/- payable by plaintiff to defendant No. 2. It is, however, clarified that this amendment will not entitle the plaintiff for recall of order dated 2nd March, 2006 by which ex parte interim order passed against defendant No. 2 was modified. The question about any interim order against defendant No. 2, in the facts and circumstances, will be considered after hearing the parties on the application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure.

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The amended plaint already filed by the plaintiff is taken on record. The learned Counsel for the defendants seek time to file the written statements to the amended plaint. Written statement be filed within two weeks and replications, if any, within two weeks thereafter.

Parties are also directed to file their original documents or certified copies thereof within four weeks and statement of admission/denial of documents of documents of each other within two weeks thereafter.

List on July 6, 2006 before the Joint Registrar for marking the documents according to the admission/denial of documents by the parties. List on August 2, 2006 before the court for framing of issues.

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List for hearing on August 2, 2006.