

(2019) 01 DEL CK 0406

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1255 Of 2018, Civil Miscellaneous Application No. 42905 Of 2018

Subhash Chander

APPELLANT

Vs

Bal Krishan & Ors

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Code of Civil Procedure, 1908 — Order 1 Rule 10, Order 7 Rule 17
Indian Penal Code, 1860 — Section 34, 406, 498A

Citation : (2019) 01 DEL CK 0406

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Daljinder Singh, Avineet Singh, Sanjeev Goyal, Amitesh Giroti

Judgement

Anu Malhotra, J

1. The petitioner Sh. Subhash Chander s/o Sh. Chetan Dass of CS No. 9800/16 pending before the learned ADJ-01, South East, Saket Courts, New Delhi assails the impugned order dated 11.07.2018 filed by the petitioner herein as plaintiff for the said suit vide which the application under Order VI Rule 17 of the Code of Civil Procedure, 1908, as amended filed by the petitioner i.e. the plaintiff of the said suit was partially allowed with observations to the effect : -

"6. In view of my aforesaid observation, the application under Order VI Rule 17 CPC is allowed only to the extent as mentioned in para no. 6A, 6B of application and to add defendant no. 1 / defendants instead of defendant as prayed for in remaining application. Rest of the amendments as sought to be incorporated being in the nature of new case / withdrawal of admission / superfluous in nature are dismissed. Cost of Rs. 10,000/- is imposed upon plaintiff, Rs.5000/- of which to be paid to opposite side and remaining to be deposited in DLSA, South East.

7. Fresh amended plaint be filed on or before next date. Two weeks advance copy be supplied to the opposite side.

Matter now be listed for payment of costs and arguments on maintainability on 20.09.2018.",

it having been observed vide the said impugned order that the plaintiff i.e. the petitioner herein had sought to introduce new facts in the plaint stating that the said facts came to his knowledge just before filing the application which application was not at all considered as nothing had been mentioned as to what were the circumstances in which the said facts came to his knowledge and could not have been so brought forth with due diligence previously. It was also observed vide the impugned order that the amendments which had been declined were also totally superfluous for the just and proper adjudication of the suit on merits and that vide the order dated 17.10.2015 of the learned Joint Registrar (Judicial) in the proceedings in the suit bearing No. CS (OS) 3396/2012 before transfer of the same from this Court to the District Courts on change of pecuniary jurisdiction in I.A. No. 25273/2014, an application under Order 1 Rule 10 CPC of the Code of Civil Procedure, 1908, as amended filed by the plaintiff i.e. the petitioner herein had been allowed and all the legal representatives of Late Sh. Chetan Dass, the owner of the property in the suit in relation to which the suit had been filed by the plaintiff i.e. the petitioner herein for partition, cancellation of sale deed dated 10.06.2010 and permanent injunction with respect to Plot Bearing No. L-27, Lajpat Nagar-II, New Delhi against Sh. Bal Krishan, arrayed as the respondent no. 1, to the present petition were held to be necessary and proper parties to the suit and were thus allowed to be impleaded as the defendant no. 2 to defendant no. 5 and are also arrayed on record to the present petition as the respondent no. 2 to respondent no. 5 and that it was directed vide order dated 07.10.2015 of the learned Joint Registrar (Judicial) that in view of the impleadment of the defendants no. 2 to 5, the plaintiff was directed to amend the plaint and that it was made clear that the amendment should be restricted to the extent required by the impleadment of the new defendants and that no new case should be set up and that the averments already made should not be withdrawn

2. In this context, the learned Trial Court has observed to the effect that there has been an introduction of new facts in the plaint in violation of the order dated 07.10.2015 in the proceedings.

3. Notice of the petition was issued to the respondents.

4. Submissions have been made on behalf of either side.

5. The amendments that have been sought by the plaintiff vide the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 dated 15.10.2015 read to the effect : -

"A) That in the entire plaint the plaintiff wants to add the word "No. 1" after the word appears in the entire plaint as "defendant".

B) That in para No. 1 of the plaint, the plaintiff wants to add the words, in first

line, after the words 'and the' as "defendant No.2 is mother of the parties and Defendant No.3 to 5 are the sisters of the parties". Whereas the word "brothers" be removed.

C) That the Plaintiff further wants to add in paragraph No.1 before the last sentence after the words "Shri Chetan Dass" the words be added as "out of the family funds, which were generated from the family business".

D) That the Plaintiff further wants to add paragraph No.1-A after paragraph No.1 in the plaint as, "1-A. That Shri Sadhu Ram, the grand father of the Plaintiff died somewhere in the year 1983 or 1984 leaving behind his only son, i.e. father of the Plaintiff Shri Chetan Dass".

E) That the Plaintiff further wants to add in paragraph No.2 after the word "Will" , the words be added "during his lifetime".

F) That the Plaintiff further wants to add in paragraph No.2 in the last line after the word "property", the words be added as, "bearing plot No.1/27, Lajpat Nagar-II, New Delhi".

G) That the Plaintiff further wants to add in paragraph No.2 towards the end of this paragraph, the words be added as "the said Will dated 09.02.2006 of late Shri Chetan Dass is in possession of Defendant No.1".

H) That the Plaintiff further wants to add in paragraph No.3, the word "Defendant" be replaced as "Defendants". In same paragraph, the words "and other family members" be removed.

I) That the Plaintiff further wants to add in paragraph No.4 of the plaint after the word "Defendant" the word "No.1". After this paragraph the Plaintiff further wants to add one more paragraph as "paragraph 'No.4A' as "That since the defendants were harassing the wife of the Plaintiff who was living in the same premises, hence the wife of the plaintiff had lodged one F.I.R. bearing No. 225/11 under Section 498A/406/34 I.P.C. against the Defendants as well as the Plaintiff. She had also initiated other criminal proceedings against the Defendants, which are pending against the Defendants etc. in the Criminal courts at Delhi. At one stage, the Defendants had debarred / boycott the Plaintiff. Accordingly, the Plaintiff has been deprived from all the ancestral properties by the Defendants. The Plaintiff has to file suits in respect of all the ancestral properties situated at Haryana and Delhi against the Defendants to get his legal rights from the Defendants. All the defendants had hatched out the conspiracy not to give Plaintiffs share from the ancestral properties and that is why the Plaintiff and his family members were debarred / boycott by the defendants."

J) That the Plaintiff further wants to add in paragraph No.5 of the plaint in the entire paragraph, wherever the word "Defendant" appears, the word "No.1" be added after the word Defendant. In the same paragraph after the date 09.02.2006, the words be added as "which was executed by late Shri Chetan Dass". At the end of this paragraph, the words "with the Defendant No.1" be

added.

K) That the Plaintiff further wants to add in paragraph No.6 as "No.1" after the word "defendant" wherever it appears in the entire paragraph. In this paragraph, the Plaintiff further wants to add in second line after the words "with respect" the words "of 1/2 share in".

L) That the Plaintiff further wants to add in paragraph No.7 the words as "No.1" after the word "Defendant" in first line.

M) That the Plaintiff further wants to add in paragraph No.8 the words as "No.1" after the word "Defendant" wherever it appears in paragraph No.8.

N) That the Plaintiff further wants to add in paragraph No.9 the words as "No.1" after the word "Defendant" wherever it appears in paragraph No.9.

O) That the Plaintiff further wants to add in paragraph No.11 in line 3 after the words "of" the words "Late" is to be inserted by removing the words "the father of the parties". In eighth line of this paragraph, the word

"Defendant" be replaced as "Defendants". At the end of line No.9 of this paragraph, after the words "grand-father", the words "of Plaintiff late Mr.Sadhu Ram" by inserted by removing the words "of the parties ". In rest of the paragraph No. 11 wherever the words appear as "parties", the word "Plaintiff be inserted by removing the word parties. In the last fourth line, the word "No.1" be added after the word "Defendant".

P) That the Plaintiff further wants to add in paragraph No. 12 in the first line after the word "Defendant" the word as "No.1" be added. In third line of this paragraph, the Plaintiff wants to add the word as "/ competent". The Plaintiff further wants to add in fifth line after the word "Funds " as "of the family". The Plaintiff further wants to add in sixth line after the word "Plaintiff", the words during his lifetime" be added. In 10th line of this paragraph, the word "Defendant" be replaced as "Defendants" by removing the words alongwith three sisters. In line No. 11th of this paragraph, the word "Plaintiff" be inserted by removing the word "parties".

In 13th line of this paragraph the word appears as "of after the word "proceeds" be removed and the word "from" be inserted. In the same line at the end, after the word "land" the words "which is" be inserted. In line 14th of this paragraph the word "that" be removed The Plaintiff further wants to add the words "from those ancestral funds/income" at the end of this paragraph after the word "Dass".

Q) That the Plaintiff further wants to add in paragraph No. 13 in 2nd line after the word "Dass" as "in favour of Defendant No.1". In the same line after the word "law", the words "in view of the above facts" be inserted. In 5th line of this paragraph after the word "Defendant", the word "No.1" be added after the words "Sale Deed" in the same line, the words "which was obtained mischievously after playing fraud upon him" be added. In 7th line after the word "properly" the

words "or receive the consideration amount" be added. In 16th line of this paragraph, the words "Plaintiff be added by removing the word "parties". In 18th line of this paragraph, after the word "problem", the words "for the" be added after removing the word "since". At the end of this paragraph, the words "the medical records of Holy Family Hospital, Okhla, New Delhi are in possession of the Defendants, particularly Defendant No.1".

R) That the Plaintiff further wants to add in paragraph No. 14 in 2nd, 5th and 17th line after the word "Defendant", the word "No.1" be inserted. Towards end of the 10th line, the word "to" may be inserted. In 16th line after the words "80 days" the words "by the Defendant No.1" be inserted. In 19th line after the word "lakhs" the words "So there is no sale consideration took place between the Defendant No.1 and late Shri Chetan Dass at the time of execution of the said sale deed" be inserted. In line No.21, the word "Plaintiff be inserted by removing the word "parties". In line No.22, the word "is" be removed and the word "Plaintiffs" be inserted. In line No.23, the word "Plaintiff be inserted by removing the word "parties".

S) That the Plaintiff further wants to add in paragraph No. 15 in line No.2 after the word "Defendant" the word "No.1" be inserted. In line No.3 after the word remedy" the word "available" be inserted.

T) That the Plaintiff further wants to add in paragraph No. 16 wherever the word appears as "Defendant" the same be replaced as "Defendants". In line No.7 of this paragraph, after the word "Defendant", the word "No.1" be inserted.

U) That the Plaintiff further wants to add in paragraph No.18 towards end of this paragraph the words "the Plaintiff undertakes to pay the requisite court fees if accrued while passing the judgment and decree or as ordered by the court.

V) That the Plaintiff further wants to add the words towards end of prayer clause (b) as "executed between late Shri Chetan Dass and Defendant No.1 in respect of the suit property".

W) That the Plaintiff further wants to add in prayer clause (d) in 5th line after the word "share", the words "awarded in the preliminary decree".

6. The amendments allowed vide the impugned order as observed hereinabove relate only to permission granted for amendment as sought vide para 6A and 6B and to add the word 'defendants' in place of 'defendant no. 1'. It has been submitted on behalf of the petitioner and not refuted on behalf of the respondents no. 1 to 5 that there are other consequential typographical amendments as prayed through the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 and vide the present petition, which would be essential as prayed by the petitioner which relate to.

7. On behalf of the petitioner, reliance was placed on the verdicts of the Hon'ble Supreme Court in : -

Revajeetu Builders and Developers v. Narayanswamy and Sons and Others; (2009) 10 Supreme Court Cases 84 Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala and others; AIR 1964 Supreme Court 11 Baldev Singh & Ors. etc. v. Manohar Singh & Anr. Etc.; AIR 2006 Supreme Court 2832 and; B.K. Narayana Pillai v. Parameswaran Pillai and Anr.; (2000) 1 SCC 712 and the verdict of this Court in Adesh Kanwarjit Singh Brar v. Ms.Babli Brar & Ors.; AIR 2011 DELHI 187, to contend that the amendments sought on behalf of the petitioner, the plaintiff of the CS No. 9800/16, do not in any manner fundamentally change the nature and character of the suit and that the amendments sought are only to clarify the existing pleadings and merely to elucidate and plead the cause more specifically and in express words and that the amendments sought are essential to determine the real controversy between the parties without altering the original cause of action.

8. On a consideration of the rival submissions made on behalf of either side, the verdicts relied upon on behalf of the petitioner, the amendments sought by the petitioner herein as the plaintiff of the suit before the learned Trial Court vide para 6A to para 6W of the application of the plaintiff i.e. the petitioner herein and the reply that was submitted by the respondents to the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 before the learned Trial Court, it is essential to observe that as regards the amendments sought other than those permitted as prayed vide para 6A and para 6B of the application filed by the plaintiff i.e. the petitioner herein allowed vide the impugned order, as regards the amendment sought vide para 6E, para 6F, para 6H, the first sentence in para 6I, which reads to the effect that the plaintiff wants to add in para 4 of the plaint after the word defendant, the word 'No. 1', the amendment sought vide para 6L, para 6M, para 6N, para 6O, the word 'No. 1' after the word defendant in para as prayed vide para 6Q, the word 'No. 1' as prayed vide para 6R in paragraph 14 of the plaint in 2nd, 5th and 17th line and the word 'to' at the end of the 10th line, the word 'plaintiff' by removal of the word 'parties' in line 21 of the para 14, the word 'plaintiff's' in line 22, the word 'plaintiff' in line 23 of para 21 of the plaint as prayed vide para 6R, the word 'No. 1' in para 15 as prayed vide para 6S, the word 'No. 1' after the word defendant in line 7 of the para 16 as prayed vide para 6O, the amendment sought to para 18 as prayed vide para 6U, the words as prayed in prayer clause-'b' as prayed vide para 6V of the application are allowed to be amended as prayed vide the application dated 15.10.2015 by the petitioner herein as had been submitted before the learned Trial Court as these are mere consequential amendments and inter alia rectification of grammatical variations. All other amendments sought by the petitioner vide the said application dated 15.10.2015, which have been opposed on behalf of the respondents have rightly been held by the learned Trial Court to be inserting new averments which cannot be new permitted as there is nothing to indicate that the plaintiff of the suit i.e. the present petitioner could not have raised the pleas now sought to be incorporated through the amendment application in spite of exercise of due diligence.

9. It is apparent thus that the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, as amended, which reads to the effect:-

17. "Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

(emphasis supplied)

has to be given effect to.

10. In the facts and circumstances of the case, thus all other amendments as sought by the plaintiff i.e. the petitioner herein other than those permitted hereinabove vide para 7 of this order are declined.

11. To this limited extent the impugned order dated 11.07.2018 of the learned ADJ-01, South East, Saket Courts, New Delhi is modified.