

**IN THE COURT OF KISHOR KUMAR, ADJ-04 (EAST),
KARKARDOOMA COURTS, DELHI.**

Suit No. 559/2018

Aditi Gupta & Anr.

.....plaintiffs

Versus

Anil Grover & Anr.

.....Defendants

12.01.2023

ORDER

1. Vide this order, application filed on behalf of plaintiff for amendment of the plaint along with another application U/o 1 rule 10 CPC for impleading defendant no. 2 to 6, shall stand disposed off.

2. Replies to the present applications have been filed on behalf of defendant.

3. The contentions of the plaintiff are that she has filed the present suit for possession, recovery of arrears of rent and future damages. The defendant Anil Grover has filed written statement. From the written statement, the plaintiff has come to know that the husband of plaintiff no.1 had sold two shops bearing private

number 1 and 2 on the ground floor to one Sachin Minocha who subsequently sold the said property to Sh. Hitesh Grover who later on sold the same to his wife Smt. Shakshi Grover. Private shop no.3 has been sold by husband of plaintiff no.1 to Sh. Sudaresan Gopalan who had sold the said shop to Smt. Sonali Grover. Now these persons claim themselves to be the owners of the suit property. Hence, the plaintiff has filed the present application seeking amendment of the heading of the suit title and also wants to add para no. 9A in the following manner:

“Suit for possession, recovery of arrears of rent of Rs. 3,20,000/- and future rent along with the relief of declaration.”

4. By the relief of declaration, the plaintiff wants to get the documents i.e GPA, Will, Agreement to Sell, possession letter, receipt all dated 28.06.2001, to be declared as null and void being forged and fabricated documents. Similar relief of declaration is also sought by the plaintiffs to the documents i.e GPA, Will, Agreement to Sell, Possession letter, receipt etc, executed in favour of defendant no.4 by defendant no.3 on 29.06.2001 and also the documents executed by defendant no.4 in favour of defendant no.5 such as GPA, Will, Agreement to Sell, possession letter, receipt all dated 26.10.2010, to be declared as null and void.

5. The further relief of declaration is sought by the plaintiffs to declare the documents allegedly executed by the husband of plaintiff no.1 in favour of defendant no.6 pertaining to private shop

no. 3 such as GPA, Will, Agreement to Sell, Possession letter, receipt all dated 14.05.2001 and on the basis of alleged documents, the documents executed by defendant no.6 in favour of defendant no.7 such as sale deed dated 14.01.2008 pertaining to private shop no.3 on the ground floor in property number 34-35, Veer Sarwarkar Block, Shakarpur, Delhi because the husband of plaintiff no.1 never authorised defendant no.6 to deal with the suit property in any manner whatsoever as Nitin Gupta had never executed any documents for sale in favour of any person, as such the alleged sale deed dated 14.01.2008 is liable to be declared as null and void. The plaintiffs have further sought amendment of valuation clause to be at Rs. 10 lac upon which the Court fees of Rs. 12,248/- has been affixed.

6. In reply to the present application, defendant no.1 has alleged that in case the amendment sought for by the plaintiffs is allowed, there would be legal difficulty as the case has been filed by the plaintiffs against defendant on the basis of landlord and tenant relationship. In such circumstances, the better course available to the plaintiffs is / was to file separate suit against the proposed defendants. It is further argued by Ld counsel for the defendant that if the amendment sought for is allowed, it would entirely change the nature of the case and the amendment sought for are even against the rules of pleadings. The plaintiffs were very much aware of the documents of which they are seeking a declaration at this stage.

7. I have heard Ld counsel for the plaintiff, Ld counsel for the defendant and have carefully gone through the record.

8. The present suit has been filed by plaintiffs against defendant Anil Grover for possession, recovery of arrears of rent of Rs. 4.80 lac and future rent on the grounds that the husband of plaintiff no.1, the father of plaintiff no.2 and 3 and son of plaintiff no.4, namely, Sh. Nitin Gupta, was the owner of property bearing no. 34-35, Veer Sarwarkar Block, Shakarpur, Delhi-92 being proprietor of M/s Kanak Associates at FF6, Main Mangal Bazar, Laxmi Nagar, Delhi-92, which has been purchased from Sh. Ashok Dhingra s/o Sh. R M Dhingra, R/o H no. 42, Shivpuri, Delhi-51, by way of registered documents on 27.04.2001. The husband of plaintiff no.1 had let out the shops of ground floor having three shutters in the said property to the defendant on a monthly rent of Rs. 30,000/- excluding other charges. The husband of plaintiff no.1 died on 28.02.2017. The plaintiffs have further stated that they are not aware as upto which period, the defendant has paid rent to deceased Nitin Gupta but no rent has been paid by the defendant after the death of Sh. Nitin Gupta w.e.f 01.03.2017 till filing of the suit. Therefore, vide notice dated 01.05.2018, the tenancy of defendant has been terminated but still the defendant has neither vacated the suit premises nor paid the rent @ Rs. 30,000/- per month which comes to Rs. 4.20 lac, till filling of the suit. Hence the present case filed by the plaintiffs.

9. The defendant appeared and filed his written statement submitting that the plaintiffs are not the owners of the suit premises as the GPA, Will etc. allegedly executed by one Mr. Ashok Dhingra in favour of late Nitin Gupta does not make the plaintiffs as owners. It is further stated by the defendant that property bearing no. 34-35, Ground floor Veer Sarwarkar Block Shakarpur, Delhi-92 is a multi storey building and there are many occupants and the defendant is not owner in respect of any of the shop situated there. Defendant has further submitted that there are two shops bearing private number 01 and 02 on the ground floor in the property bearing no. 34 and 35, Ground Floor, Veer Sarwarkar Block, Shakapur, Delhi-92. On 28.06.2001 by way of registered GPA, Agreement to Sell, receipt, possession letter and registered Will, the shops bearing private no. 01 and 02 on the ground floor were sold to Sachin Minocha by Sh. Nitiin Gupta proprietor of M/s Kanak Associates and Sh. Ashok Dhingra and Sh. Sachin Minocha sold the aforesaid shops by way of registered GPA dated 26.09.2001, Agreement to Sell, receipt, possession letter and registered Will, to Sh. Hitesh Grover. Sh. Hitesh Grover executed the sale deed in favour of his wife Smt. Shakshi Grover on dated 26.10.2010 vide registered sale deed. Now Smt. Shakshi Grover is the owner of private shop no. 01 and 02. It has been further submitted by the defendant that there is one shop bearing private number 03 on the ground floor. On 14.05.2001 by way of registered GPA, Agreement to Sell, receipt, possession letter and registered Will, the shop no. 03 on the ground floor was sold to

Sundaresan Gopalan by Sh. Nitin Gupta. Sh. Ashok Dhingra and Sundaresan Gopalan sold the aforesaid shop by way of registered sale deed dated 14.01.2008 to Smt. Sonali Grover w/o Sh. Anil Grover and now Smt. Sonali Grover is the absolute owner in respect of the said shop no. 03.

10. Rest of the case of the plaintiff has been denied being wrong and incorrect.

11. Replication has been filed to the written statement of defendant wherein the contents of the plaint have been reaffirmed and reiterated and the contents of the written statement have been denied being wrong and incorrect.

12. The plaintiff has filed the present suit for recovery of possession and arrears of rent against defendant Anil Grover. The plaintiffs have not filed any rent agreement or any other proof to prima facie prove that the defendant Anil Grover was tenant in the suit shops at any point of time. The defendant in his written statement has disclosed all the facts that suit shops had been sold out by husband of plaintiff no.1 in the year 2001 itself on the basis of some of the registered documents.

13. I find force in the arguments of Ld counsel for the defendant that in case the amendment sought for is allowed, the same shall completely change the nature of the suit. So far as the suit between plaintiffs and the present defendant is concerned, the only question

to be decided is the jural relationship of landlord and tenant between the parties but in view of the facts disclose by the defendant in the written statement, entirely a different inquiry is to be conducted by the Court.

14. In these circumstances the role of defendant no.1 is no where in case the amendment is allowed.

15. Recently the double Bench of the **Hon'ble Supreme Court in September 2022 in case 'Life Insurance Corporation of India Vs. Sanjeev Builders Pvt Ltd & Anr'** has laid down guidelines to be kept in mind for amendment of pleadings U/o 6 rule 17 CPC. The Apex Court held:

“All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word ‘shall’, in the later part of Order 6 rule 17 CPC”.

16. The Apex Court further held that:

*“A prayer for amendment is generally required to be allowed unless by the amendment, a time barred claim is sought to be introduced in which case the fact that the claim would be time barred becomes a relevant factor for consideration. **The amendment changes the nature of the suit.** The prayer for amendment is malafide and that by the amendment, the other side*

looses a valid defence”.

17. The Hon’ble Apex Court further clarified that amendment should be disallowed where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new cause, foreign to the case set up in the plaint.

18. Now coming to the facts of the present case, by way of amendment, the plaintiff wants to introduce entirely a new case, based on entirely new cause of action against the proposed defendants. The same is not permissible in law as held by the Hon’ble Apex Court *supra*.

19. In view of the above, I find no merits in the application of the plaintiff U/o 6 rule 17 CPC. Consequently, the application of the plaintiff U/o 1 rule 10 CPC is also found to be of no consequence. Both these applications are, therefore, dismissed.

**(Kishor Kumar)
ADJ-04, East District,
Karkardooma Courts, Delhi
12.01.2023**