

CS no.58601/16

Sheetal Dagar VS Baljeet Singh Dagar

19.02.2020

Present: Ld. Counsel for plaintiff
Ld. Counsel for defendant.

Vide this order, I shall dispose of an application u/O 6 rule 17 CPC filed by the plaintiff subsequently to the application u/O 7 rule 11 CPC filed by the defendant.

By way of the application u/O 7 rule 11 CPC filed by the defendant, it has been alleged that the suit of the plaintiff is barred as the plaintiff failed to seek consequential relief of cancellation of the registered gift deed and the relief of possession of the property.

On the contrary by way of the application u/O 6 rule 17 CPC filed by the plaintiff, it has been averred that trial of the suit is not yet began and pleadings are yet to be completed and the counsel after being entrusted in the present case and after going through the pleadings realized that the suit has been filed for declaration/cancellation of gift deed. However, inadvertently the consequential relief of possession has not been mentioned in the prayer clause.

Hence, the prayer clause of the plaint be amended as under-

a) Pass a decree, thereby, canceling the registered gift deed dated 19.05.2016 registered before Sub-registrar VIIA, Sarojini Nagar vide its registration no. 2085, in book no.1, Volume no. 177, on page no. 108 to 114 and declaring same as null and void ab-initio and not binding on the plaintiff.

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- b) Pass a decree, thereby, declaring that plaintiff is joint / co-owner and having 50% share in the suit property I.e flat no-2111, Sector-C, Pocket-2, DDA Flats, Vasant Kunj, New Delhi-110070*
- c) Pass a decree, thereby, directing the defendants to hand over vacate and peaceful possession of the ½ share of the property bearing no. 2111, DDA Flats, Sector-C, Pocket-2, Vasant Kunj, New Delhi-110070 to the plaintiff.*
- d) Decree of permanent injunction; restraining the defendants, their representatives, agents, associates etc. from selling transferring, mortgaging or creating third party interest by any illegal way in regard to said ½ share of the plaintiff in the suit property.*
- e) Alternate relief; if this Hon'ble Court reach at the conclusion that the relief claimed by the plaintiff for could not granted due to any legal lacuna then this Hon'ble Court may direct the defendant no.1 to pay the 50% share of the market value of the above mentioned flat to the plaintiff alongwith further interest @18% p.a as alternate relief if this Hon'ble Court may be pleased to deem it fit and proper in the interest of justice.*

It is further stated that the above mentioned amendment is necessary for the decision of controversy between the parties and is also necessary to avoid multiplicity of pleadings and thus no new cause of action is being added.

Heard. Considered.

A perusal of the original plaint reveals that the prayer clause read as under-

(a) Decree of declaration, declaring the Registered Gift Deed dated 19.05.2016 vide tis Registration no. 2085, in Book no.1, Volume no. 177, on pages 108 to 114 dated: 19.05.2016 before the Sub Registrar-VII A, Sarojini Nagar, New Delhi, Null and void and canceled and the plaintiff shall be the absolute owner of her half

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share (½) in the above noted Flat no- 2111, Sector-C, Pocket-2, DDA Flats, Vasant Kunj, New Delhi-110070.

(b) Decree of permanent injunction Restraining the defendants, their representatives, agents, associates, etc. from selling, transferring, mortgage or creating any third party interest by any illegal way in regard the said ½ share of the plaintiff in Flat no- 2111, Sector-C, Pocket-2, DDA Flats, Vasant Kunj, New Delhi-110070, in the interest of justice.

(c) If this Hon'ble Court reach at the conclusion that the relief claimed by the plaintiff for declare that above mentioned Registered Gift Deed canceled & null and void due to any legal lacuna, then this Hon'ble Court may direct the Defendant no-1 to pay the 50% (fifty percent) share of the market value of the above mentioned flat to the plaintiff along with further interest @ 18% p.a as an alternative relief if it deems fit and proper in the interest of justice.

(d) Pass such other order which this Hon'ble Court may deems fit and proper in the circumstances of the case in favour of the plaintiff and against the defendants'.

It is clear that relief of declaration/cancellation was sought along with relief of permanent injunction. However, the consequent relief of possession was left out. Ld counsel for defendant has relied upon the judgments titled '**Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors.,**' MANU/SC/1724/2009 and '**Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Ors.,**' MANU/SC/0019/1963.

In **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors.,** it has been held that-

'if a fresh suit on the amended claims would be barred by limitation on the date of application, the Court should decline such amendments'.

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In this regard it is pertinent to mention here that the relief of declaration and cancellation was sought by the plaintiff within limitation and the relief now sought by way of amendment is merely consequential relief of the main relief sought by the plaintiff and it cannot be said that the said relief is time barred. Hence, the fact of the present case are distinguishable from the facts of the 'Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors'.

In '**Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Ors**', it has held that-

'.....amendment u/O 6 rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which has accrued to him by lapse of time'.

Thus, it is clear that the amendment sought is not barred by time and hence the above mentioned judgment is also not applicable to the facts of the present case.

On the contrary, it is settled law that rules of procedure are intended to be handmade to the administration of justice. The party cannot be refused just relief merely because of some mistake negligence inadvertence or even infraction of rules of procedure.

In '**Ganpat Singh Vs. Sher Bahadur Singh and Ors., MANU/UP/0018/1978**', it has held that-

'it is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of

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the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side'.

Even otherwise at the initial stage of trial, the Court has to see whether interest of justice would suffer in disallowing an amendment thereby rejecting the suit of the plaintiff at its very outset. Plaintiff is merely seeking consequential relief by way of addition of relief of possession in the prayer clause and it cannot be said that the amendment if allowed would result in a fresh cause of action. At this stage, no prejudice would be caused to the opposite party if the present amendment as sought by the plaintiff is allowed.

Hence, the application u/O 6 rule 17 CPC of the applicant is allowed subject to cost of Rs, 10,000/- to be paid to the opposite party.

As the necessary consequences, the application of defendant u/O 7 rule 11 CPC is hereby dismissed.

List for amended plaint to be filed with advance copy to the opposite party within 30 days from today and for completion of pleadings on **23.05.2020**.

(Chetna Singh)
ADJ-03/PHC/NEW DELHI.
19.02.2020