

05.09.2016

Present: None.

This suit was earlier pending in the Hon'ble High Court but due to change of pecuniary jurisdiction it was transferred to this court. Plaintiff filed suit on 11-12-2013 for cancellation of sale deed dated 23-1-2013 entered into between her and defendant as well as for declaration that she be declared sole owner of the suit property besides claiming relief of possession and permanent injunction. Hon'ble High Court vide order dated 13-12-2013 granted exparte interim injunction in favour of plaintiff on application under Order 39 Rule 1 and 2 CPC bearing IA no. 20303/13. Written statement of defendants came on record. Defendant no. 2 also moved an application bearing IA no. 10596/14 under Order 39 Rule 4 CPC for vacation of stay.

Since during pendency of the suit, sale deed of the suit property was executed by defendant no. 1 in favour of defendant no. 2, so the Hon'ble High Court vide order dated 5-2-2015 directed that this sale deed be registered but original registered sale deed should be deposited with the registry of the court. Defendant no. 2 was directed to obtain prior permission of the court before creating any third party interest in the suit property. With these terms, the stay application bearing IA no. 20303/13 and another application for vacation of stay bearing IA no. 10596/14 were disposed off vide order dated 10-3-2015.

After completion of pleadings of parties, admission/ denial of documents took place on 18-9-2014. However, plaintiff had moved an application under Order 7 Rule 14 CPC bearing IA no. 18442/14 for permission to file additional documents. This application was disposed off on 10-3-2015 and both the parties were permitted to file additional documents, if any within a period of four weeks.

Plaintiff had also moved an application bearing IA no. 24109/14 for amendment of plaint under Order 6 Rule 17 CPC which was allowed on 5-2-2015 and amended plaint was taken on record. Defendants filed amended written statements but in between the case was transferred to this court.

Plaintiff filed replication along with certain more documents in this court on 24-2-2016 but an objection was raised on behalf of defendant no. 2 that plaintiff had included certain facts in the amended plaint which were not allowed and in this regard objections were already taken in the amended written statement. Counsel for defendant was directed to file proper detailed application mentioning therein which particular paragraph/line/word of the amended plaint has been added beyond the permission granted while allowing amendment application as well objection can be raised regarding filing of replication also in that application.

Thereafter, defendant no. 2 moved application under Order 6 Rule 7, 16 and 18 CPC on 16-3-2016 with prayer that amended plaint be not taken on record and the amended plaint beyond the leave of the court be struck off. Defendant no. 1 also moved similar application under Order 6 Rule 7 and 16 CPC on 27-4-2016 for not taking amended plaint of the plaintiff on record and for striking off the amendments which were incorporated without permission and for giving directions to the plaintiff to file a fresh amended plaint strictly in accordance with the order dated 05.02.2015. On the other hand, plaintiff also moved one application under Order 6 Rule 17 CPC on 27-4-2016 for amendment of the plaint. Thus by this order, all these three applications are being disposed off. I have heard counsel for the parties and gone through the record.

When the case was pending before Hon'ble High Court, then vide order dated 5-2-2015, keeping in view the liberal approach with regard to amendment of the pleadings, the amendment application of the plaintiff bearing IA no. 24109/14 was allowed subject to just exception and without prejudice to

the rights of the defendants to take all their pleas and defences in their amended written statement. However, plaintiff has misused this liberty of the Hon'ble High Court very liberally. She had played fraud upon the court and tried to mislead the court or to make fool of the court by exceeding the authority given to her. Not only she added certain new averments in the amended plaint but also omitted and deleted certain previous submissions without any prior permission of the court. Number of new facts were added and even paragraph numbering were also changed in the amended plaint filed. This act and conduct of the plaintiff amounts to an abuse of the process of the court and she needs to be dealt with harshly. Defendants in their applications have given in detail which addition, alternations and deletion etc. was carried out by the plaintiff in her amended plaint unauthorizedly and beyond her application IA No. 24109/14 which was allowed whereas the plaintiff described the same as a small clerical mistake in her fresh application under Order 6 Rule 17 CPC filed on 27.04.2016 and in this regard, there is no hesitation to say that plaintiff again instead of admitting her mistake clearly and tendering the apology simply stated that her minor clerical mistake does not go to the root of the matter. Infact plaintiff had twisted the orders of the court for her own benefits in wrong and illegal manner so she should be dealt with strictly. No leniency has to be taken against such a person who intentionally violates the orders of the court and misuse the concession given.

During arguments, it is now admitted frankly on behalf of the plaintiff, that unauthorizedly certain paragraphs and contents have been added, twisted or changed in the amended plaint which were nowhere mentioned in the amendment application bearing IA no. 24109/14 that was allowed by Hon'ble High Court vide order dated 5-2-2015. Such changes cannot be treated as a minor mistake in any situation. There is no need to elaborate what mischiefs have been done by the plaintiff in her amended plaint because the details of the same are already mentioned in the applications of the defendants which

are not denied and even if the original plaint and application IA No. 24109/14 is compared with the amended plaint, then it is fully clear that the defendants are not exaggerating the submissions and infact are presenting correct picture to the court.

Any amendment which was never sought for, if is added in the amended plaint has to be rejected straightway. The misuse of the authority by a litigant compels the court to bring back him to the original position. In such situation, the court has power to treat such application as rejected which was allowed at one time. The court can bring the defaulting party to original position and to restore the status quo ante also. In case of need, the order giving concession and relief can be recalled by the court on an application of opposite party or even by suo moto also and that relief can be withdrawn. Accordingly, I hereby is accepting the applications of the defendants and rejecting the amended plaint filed by the plaintiff on 27.11.2014 in pursuance of the order dated 5-2-2015 and is treating that amendment application was not allowed at any time. There is now no need to allow again the plaintiff to file fresh amended plaint in terms of original IA no. 24109/14. Hence, the original plaint only shall be taken into consideration and all subsequent pleadings of the parties are hereby rejected.

The plaintiff has moved one another application under Order 6 Rule 17 CPC for amendment of the plaint on 27.04.2016. If para no. 9, 11 and other paragraphs of this application are read in totality, then it is clear that the plaintiff wants to further amend the amended plaint. This application is now not maintainable and has become infructuous when the amended plaint has already been rejected. Accordingly, this application of the plaintiff is hereby dismissed. One another application of the plaintiff u/s 149 CPC filed on 27.04.2016 for giving time of 4 weeks to pay the court fees is automatically become infructuous because when no permission is being granted to amend the amended plaint, then no question will arise to pay the court fees

accordingly.

With these observations, application of defendant no. 2 under Order 6 Rule 7, 16 and 18 CPC filed on 16.03.2016 and application of defendant no. 1 under Order 6 Rule 7 and 16 CPC filed on 27.04.2016 are allowed and application of the plaintiff under Order 6 Rule 17 CPC filed on 27.04.2016 is hereby dismissed. Keeping in view the act and conduct of the plaintiff referred above in misusing the process of the court and taking the undue advantage of the liberty given as well as exceeding the authority and concession granted, plaintiff is burdened with costs of Rs. 20,000/- to be paid to both the defendants in equal shares. This costs should be paid definitely on next date of hearing otherwise the court can pass an adverse order also.

The following applications are still left to be decided :

1. Application under Order 7 Rule 11 (b) CPC filed by defendant no. 2 dated 16.03.2016.
2. Application under Order 7 Rule 14(3) CPC filed by defendant no.1 for not taking the documents of the plaintiff on record filed without leave of the court on 24.02.2016.
3. Application of the plaintiff under Order 7 Rule 14 CPC for taking on record the documents.

Put up this matter on 01.10.2016 for arguments on remaining pending applications.

(ASHWANI KUMAR SARPAL)
Addl. Distt Judge(NE)-01
05.09.2016