

18.12.24 (4:30 PM)

Present: None.

Vide this order I shall dispose of the application under Order VI Rule 17 CPC filed on behalf of the plaintiff.

By way of present application, it is stated by Ld. Counsel for the plaintiff that present suit has been filed for specific performance against the defendant, however, when the defendant had appeared in this case, he informed that he had already sold the suit property in the month of December, 2022 before filing of the present suit to one Mr. Amri Lal Hora. It is further submitted that in fact the defendant had sold the suit property in February, 2023 to one Mrs. Suman Hora wife of Amrit Lal Hora. It is submitted that due to the said facts, the plaintiff wants to amend the present suit with prayer of declaration, possession and permanent injunction.

Per contra, without filing any formal reply to the present application, it is submitted by Ld. Counsel for defendant no.1 that the amendment sought for by way of present application is going to change the nature of suit completely. It is further submitted that the application deserves to be dismissed with cost.

I have heard Ld. Counsel for both the parties and have carefully gone through the material on record.

In *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.*, 2022 SCC OnLine SC 1128, the Hon'ble Supreme Court has observed that "The amendments which are not permitted are- (a) while seeking amendment, the parties does not seek to withdraw any clear admission made by the party which confers a right on the other side; (b) amendment

divesting the other side of certain valuable accrued right; (c) amendments that would alter the nature of the suit; (d) the prayer for amendment is malafide; (e) by the amendment, the other side should not lose a valid defence.”

Further, in *Basavaraj vs Indira*, dated 29th February, 2024, the Hon’ble Supreme Court held that amendments that fundamentally alter the nature of the suit cannot be permitted.

Now adverting back to the facts of the present case, the plaintiff has filed the present suit for specific performance along with subsequent relief of possession and permanent injunction on 22.12.2022. Perusal of record shows that on dated 13.02.2023, the defendant had made statement on oath before the Court to the effect that he had already sold the suit property to Sh. Amrit Lal in December, 2022. Now, by way of present application the plaintiff wants to change the nature of relief as aforesaid.

It is pertinent to mention here that the amendments sought for by way of present application would completely change the nature of suit. Furthermore, plaintiff himself mentioned in his application under Order VI Rule 17 CPC that the nature of suit is now changed. In these circumstances, since the nature of the present suit is going to alter completely, I do not deem it appropriate to allow the present application.

In view of my above discussion and the case laws, as discussed above, the application under Order VI Rule 17 CPC, moved on behalf of the plaintiff stands dismissed.

Put up the case for FP, on 03.02.2025.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/18.12.24.