

Rahul Garg Vs. Wasim Ahmad @ Mohd. Wasim & Ors.
CS no. 575804/16

14-08-2019

3:45 pm

Present: D-1 to 3 in person

Arguments have been heard on the application moved by the plaintiff u/o 6 Rule 17 CPC seeking amendment in the plaint.

The plaintiff has filed the present suit on 23-02-2013 seeking possession of property bearing no. H-116, Vijay Vihar, Ph-1, Delhi on the pleadings that he purchased the same from defendant no. 2 and 3 after paying them a consideration of Rs. 5 lacs on 26-12-2011 by way of General Power of Attorney, Agreement to Sale and Purchase, receipt, affidavit and registered Will executed in his favour. The plaintiff also claimed the mesne profits along with interest in the suit and also decree of permanent injunction restraining the defendants from selling, alienating or creating third party interest in the property. It is pleaded that the defendant no. 1 on 26-12-2011 was in illegal possession of the property and plaintiff called upon and requested him to handover peaceful physical possession to him but he sought some time approximately of three months for looking alternative

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premises. He was advised by the elders and respectable person and he promised to handover the possession to the plaintiff but did not handover the same on account of malafide intention. It is pleaded that the plaintiff came to know through a property dealer in the 2nd week of December 2012 around 10-12-2012 that the defendant no. 1 had contacted him to sell the suit property and the plaintiff with his father and brother immediately went to him but he denied the same and he was again requested to surrender the physical possession latest by 31-01-2013 in all probabilities and he assured them as such positively. It is alleged that the defendant flatly refused to vacate and handover the physical possession to the plaintiff when was asked on 06-02-2013.

The plaintiff was allowed to amend the plaint vide order dated 27-11-2013.

Thereafter, when the suit was pending for the disposal of the application of the defendant u/o 7 Rule 11 CPC, the present application was moved on behalf of plaintiff with the submissions that the plaintiff recently engaged his counsel and during preparation the brief of the case, the counsel found that in the available facts and circumstances and in view of recent judgment of Hon'ble Supreme Court in case of Suraj Lamp & Industries Pvt. Ltd. AIR 2012, SC 2006, the

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title document by which the property got purchased by the plaintiff from defendant no. 2 and 3 have no value or can be valid documents for transfer of immovable property unless and until the plaintiff to obtain specific performance against defendant no. 2 and 3 for executing sale deed in favour of the plaintiff with regard of suit property. The plaintiff submitted that he wants to amend the prayer clause by addition of new prayer in place of existing prayer as under:-

“to direct the defendant no. 2 & 3 for executing registered sale deed in favour of plaintiff with regard of suit property i.e. House No. 116, area measuring 50 Sq. Yds, situated in Phase-I, Vijay Vihar, Delhi-110085 bounded as East: other property, West: other property, North: Gali 12 Ft Vide, South: other property and defendants to be directed to hand over peaceful and vacant possession of the aforementioned suit property in favour of plaintiff by way of specific performance.”

It is submitted that the proposed amendment is formal in nature which does not affect the merit of the case and does not create any new cause of action and change the nature of the suit.

The application is opposed by the defendants and it is the plea of defendant no. 1 that under the garb of present

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application, the entire suit of the plaintiff is going to be changed and as per settled law, no such amendment can be allowed. It is submitted that the relief of suit for specific performance sought in the application is hopelessly time barred and the same is afterthought and mala fide.

Similar are the submissions on behalf of defendant no. 2 and 3. It is submitted that no new facts which were not in the knowledge of plaintiff have brought out in the application and the application is an abuse of process of law and is liable to be dismissed. It is submitted that they have taken all the stands in the written statement as well as in the application u/o 7 Rule 11 CPC regarding the maintainability of the suit. It is submitted that the plaintiff had engaged the present counsel prior to 16-09-2014 and thereafter, the matter was adjourned for 10-11-2014, 09-02-2015, and 09-03-2015. It is submitted that the application filed on 09-03-2015 is at a very belated stage, therefore, is liable to be dismissed.

It is the contention of the counsel for plaintiff that amendment may be sought at any stage of the suit and the court has to adopt a liberal approach while deciding the said application. It is submitted that as per the findings in the case of Suraj Lamp (supra), the plaintiff can file the

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amendment application as in the said case, the Hon'ble Supreme Court has opined that the documents pertaining to GPA sale can be considered genuine. The reliance is placed upon the cases of (1) Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr, AIR 2012 Supreme Court 206; (2) Sampath Kumar Vs. Ayyakannu & Anr (2002) 7 Supreme Court cases 559; (3) Raj Kumar Vs. Dipender Kaur Sethi, AIR 2005 Supreme Court 1592; and (4) State of A.P. and others Vs. Pioneer Builders, A.P., 2007 (1) RCR (Civil) 240.

It is the contention of the defendants that the documents involved in the present suit have been executed after the judgment in Suraj Lamp (supra) and the findings of the Hon'ble Court are binding upon the parties and the plaintiff cannot claim the ownership rights on the documents by filing the suit after the judgment in the said case. It is submitted that the nature of the suit is being changed by way of proposed amendment and that the proposed relief of specific performance has become time barred on the date of application. Reliance is placed upon the cases of Vaishali Gaur & Anr. Vs. Sanjay Sharma & Anr., 2014 (2) CLJ 637 Del.; L.C. Hanumanthappa Vs. H.B. Shivakumar, VI (2015) SLT 778 and Revajeetu Builders & Developers Vs. Narayanaswamy & Sons (2009) 10 SCC 84.

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Perusal of the file reveals that prior to issuance of summons to the defendants of the suit, the plaintiff filed an application u/o 6 Rule 17 CPC on 15-07-2013. The application was pending and on 27-11-2013, the counsel Sh. D. K. Mishra for the plaintiff stated that the application was having some typographical error and for that reason, the plaintiff does not want to press that application. A fresh application was moved and considering that the amendment are formal in nature, the same was allowed on 27-11-2013 by the Ld. Predecessor of this court. In the application which was not pressed for disposal, the plaintiff was proposing to insert a new Para 10A regarding the pleadings that defendant nos. 2 and 3 had undertaken to execute the sale deed in favour of the plaintiff of the suit property but now they have refused to execute the sale deed and they are legally and morally bound to execute the sale deed in favour of the plaintiff. The plaintiff also pleaded about the proposed amendment in prayer Clause B and to add words "by way of specific performance".

Thus, considering the application moved earlier at the time of admission of the case, it cannot be said that the defect in the suit has come in the knowledge of the present counsel when he was preparing the brief.

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It is settled law that a party can be allowed to amend the pleadings which are necessary to determine the real questions in controversy between the parties and the court is required to take liberal approach while dealing with the application seeking permission to amend the pleadings. It is also settled that the application for amendment of plaint changing nature and character of suit by substituting relief cannot be allowed.

The Supreme Court of India in REVAJEETU BUILDERS & DEVELOPERS V. NARAYANASWAMY & SONS, (2009) 10 SCC 84 after critically analysing both the English and Indian cases enumerated some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment:-

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

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(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

It is the contention of the defendants that the relief of specific performance has become time barred on the date of application i.e 09-03-2015. A suit for specific performance is required to be filed within three years from the date fixed for the performance and if no such date is fixed then the limitation period starts to run when the plaintiff has noticed that the performance is refused. The agreement dated 26-12-2011 executed by defendant no. 2 and 3 in favour of the plaintiff does not contain any date by which the sale deed was to be executed by the defendant no. 2 and 3 in favour of plaintiff. Thus, the limitation to file the suit for specific performance is to start from the day when the plaintiff has noticed that the performance of the agreement is refused. The suit has been filed by the plaintiff on 28-02-2013 in which written statement are filed by the defendants raising the objection to the claim of the plaintiff. Thus, even if the date of filing the suit is considered as the day when the

defendants refused to perform the agreement, even then the application filed on 09-03-2015 seeking proposed relief appears to be within limitation period.

In the case of Vaishali Gaur, the Hon'ble High Court of Delhi has declined the permission to amend the plaint to incorporate the relief of specific performance in a suit which was filed claiming the ownership on the GPA sale documents opining that by way of present amendment, the nature of the suit is being changed. The finding of the Hon'ble High Court are applicable to the facts of the present case and as per the settled law, the application is dismissed as by allowing the amendment to incorporate the relief of specific performance the nature of the suit is being changed.

Put up for arguments on the application u/o 7 Rule 11 CPC for 18-11-2019.

(SUNIL CHAUDHARY)
ADJ-03 (N/W) ROHINI COURTS
DELHI: 14-08-2019