

IN THE COURT OF SH. HASAN ANZAR, ADJ-06
WEST DISTRICT, TIS HAZARI COURTS

CS No. 10116/16

Sushila Devi & Ors.

.....Plaintiffs

Versus

Shiv Narain & Ors

.....Defendants

Date of Order: 23.02.2019

ORDER

1. Defendant has moved an application under Order 14 Rule 5 and order 18 Rule 17 CPC r/w section 151 CPC.

2. The suit for recovery of possession under Section 6 of Specific Relief Act and permanent injunction was instituted by the plaintiff claiming that they have been dispossessed from the suit property.

3. The case was instituted in the year 2009 and after

framing of issues on 30.07.2009, matter was fixed for evidence and when the case was at the stage of DE, an application under order 6 Rule 17 CPC was filed by the plaintiff stating that typographical error has occurred in para no.4, 5 & 6 of plaint wherein in second and third line of para no.4 & 5 respectively, 'defendant no.2' has written whereas same should have been written as 'plaintiff no.2'. It is also averred in that application that in para no.6, in 6th line, the word 'defendants' is written whereas it should have been written as 'plaintiffs'. Vide order dated 08.11.2017, an application for amendment as filed by plaintiff seeking amendment in plaint for making the correction was allowed and the amended plaint was ordered to be filed. It is also relevant to mention that defendants did not file any reply to the application for amendment and amendment has been opposed solely on the ground that it has been moved belatedly and typographical error has not been explained at the time of filing of replication.

4. The present application under order 18 Rule 17 CPC is based on the premises that vide order dated 24.05.2018 liberty was granted to the defendant “to move an appropriate application with regard to the alleged resilement of the earlier admission made in the plaint”.

5. Reply to the above captioned application has been filed on behalf of plaintiff wherein dismissal of the application has been prayed.

6. I have heard ld counsel for parties and perused the contents of application and from the very reading of the application, no reason has been assigned by the plaintiff as to in what way, defendants require the recall of witness of plaintiff for further cross examination specially in a situation when the order of amendment itself notes that it was a typographical error.

7. Even the cursory look at the previous Written statement filed by defendants would show that no such objection has been raised and even the manner of narration of the mistake as made in the earlier plaint whereby plaintiff no.2 was written as defendant no.2 would itself show that it only refers to the plaintiff and none else and even in the amended Written statement, it does not in any manner indicate that defendants have suffered because of any confusion.

8. The plaintiff has filed the amended plaint and defendant has filed the amended WS on the basis of which there is specific clarity as regarding the identity of plaintiff so it cannot be said that any resilement was made by plaintiff by making amendment in his pleading.

9. From the record it is revealed that plaintiff's witnesses have been exhaustively cross examined by defendants and there is nothing on

the record which would suggest that merely because of the wrong mentioning of the name in the plaint any defence of the defendants was prejudiced and I therefore see no reason as to why application under Order 18 Rule 17 CPC be allowed. It is also relevant to note that the nature of amendment has also not changed the nature or the character of the suit and therefore I find no merit in the application filed by defendant. Accordingly, same is dismissed.

10. The second part of the application has prayed for framing/striking of issues as framed on 30.07.2009. Perusal of the proposed issues as sought to be filed/raised by defendant would clearly indicate that issues were already framed on 30.07.2009 and same has covered all the facts and issues which are proposed to be raised by defendants. Even a substantial part of the evidence has been recorded and therefore the application under Order 14 Rule 5 CPC is also dismissed.

11. In view of the above discussion, the ***application under Order 14 Rule 5 and order 18 Rule 17 CPC r/w section 151 CPC filed by defendants is dismissed.***

Announced in the Open Court
on 23.02.2019

(Hasan Anzar)
Additional District Judge-06
West District, THC