

IN THE COURT OF SH. RAKESH KUMAR-IV, ADJ-06
WEST DISTRICT, TIS HAZARI COURTS

CS No. 10116/16

Smt. Sushila Devi and anr.

.....Plaintiffs

V/S

Sh. Shiv Narain and ors.

...Defendants

Date reserved for Order: 08.11.2017

Date of Order: 08.11.2017

Order on Application U/o 6 rule 17 CPC

1. By filing present application on 24.12.2012, applicant/plaintiff seeking amendment in the plaint on the ground that while going through the plaint for preparing for the cross-examination on the affidavit given by the defendants, it is noticed that in para No. 4 line No. 2, para No. 5 line No. 3 and 6 in para No. 6 line no. 1 the word defendant no. 2 is mistakenly typed whereas the word plaintiff no. 2 ought to have been typed. In line no. 2 para no. 6, the word 'defendants' is typed instead of the word 'plaintiffs'. That the plaintiff now intends to amend the word 'defendant' in line no. 2 of para no. 4 and line no. 3 and 6 in para no. 5 and line no. 1 of the para no. 6 of the plaint with the word 'plaintiff' and in line no. 2, the words 'plaintiffs' being substituted in place of word 'defendants'.

2. It is contended that the mistake occurred in the plaint neither

deliberately nor intentional but a bonafied typographical occurred due to over sight and is not going to cause any loss to the defendant.

3. No reply to the application filed on behalf of the defendants, however, oppose the application on two grounds i.e. firstly the present application has been filed at the stage of defendant evidence and also no due-diligence has been explained in the application in support of the contention and even typographical mistake/bonafide mistake had not been explained at the time of filing of the replication.

4. I have heard and perused the case file.

5. As per provision of order 6 rule 17, the applicant has to explain due-diligence in case amendment has been sought after commencement of trial. Simultaneously it is also the settled law while considering such application, the court has to see whether the amendment which has been sought are necessary for the just decision of the case or not. In the present case amendment has been sought only in respect to the fact that instead of defendant no. 2 it should be plaintiff which has been mentioned on several places/para of the plaint. From the file it reveals that apart from plaintiff, Sh. Vijay Sherawat has also been examined by the plaintiff as PW4 and in para no. 6 of his evidence by way of affidavit, it is specifically deposed that plaintiff no. 2 Jagdish Yadav use to visit the plot which support the contention of the plaintiff in the present case despite that/surprisingly no cross examination on this point has been done by the defendant. Moreover, in the replication in the para no. 5 it is contended that the defendant demolished walls marked A-B and B-C etc. Hence I am of the

considered view the amendments which are sought, are very necessary just decision of the case because the present suit has been filed by the plaintiff u/s 6 of Specific relief Act and in para no. 5 of the plaint it has been explained how the plaintiff (inadvertantly written as defendant no. 2 for which amendment sought) came to know dispossession from the property in question/alleged encroachment and trespassed by the defendants which is, in correspondence para no. 5 of the written statement has not specifically denied and explained as provided in rule 3, 4 and 5 of order 8 of CPC. However, it is contended that the property in question has always been remain in possession of defendant no. 4 since the year 1988 as owner.

6. After taking into consideration facts and circumstances as well as evidence led by the plaintiff or the defendant I am of the considered view that the end of justice would be made when the present application is allowed otherwise the purpose of filing of the suit would be frustrated and the defendant have opportunity to file the amended written statement and even otherwise the law provides plaintiff to lead evidence in rebuttal after conclusion of defendant evidence. However, it is not denied that due to the negligence which otherwise not gross negligence, the delay in disposal of the present case has been caused as the present suit has been filed on 20.03.2009 hence, the present application U/o 6 rule 17 CPC is liable to be allowed subject to cost. In view of the above and in the interest of the justice ***present application U/o 6 rule 17 CPC is allowed with the cost of Rs. 10000/- to be paid to the defendants within seven days.***

Announced in the Open Court
on 08.11.2017

(Rakesh Kumar-IV)
Additional District Judge-06
West District THC