

**IN THE COURT OF SH. RUPINDER SINGH DHIMAN, CIVIL JUDGE -06,
CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI.**

CS SCJ No 1990/2020

Rajwati

Vs.

Sunil Kumar

07.07.2020

At 2.30pm

Suit for permanent and mandatory injunction received by way of assignment from Ld. Senior Civil Judge. Same be checked and registered.

Present: Sh. Rishab Jain, Counsel for Plaintiff (Through Video Conferencing)

1. Present suit has been filed in electronic form. Counsel for plaintiff submits that he shall file the court fees and appropriate stamp on vakalatnama once the stamp vendors open. The present suit for permanent and mandatory injunction was initially listed before the Ld. Vacation Judge on 11.06.2020.

2. In a nutshell, factual matrix of the case as culled out from the bare perusal of plaint is as under: -

Plaintiff is the owner and in possession of House no 252, Gali no 6, Village Jagat Pur, Delhi (hereinafter referred to as suit property). Suit property was previously owned by Sh. Rati Ram (father-in-law of the plaintiff) who had purchased the same from Sh. Mam Chand in the year 1976. Plaintiff became owner of the suit property by virtue of WILL dated 16.07.2017 executed by Sh. Rati Ram in favor of the Plaintiff. The defendant, who is her son, who wants to dispossess her and two tenants from the suit property. Plaintiff is under apprehension of forcible dispossession as defendant has given threats to raise wall around the suit property and sell the property to land mafia. Hence, the present suit has been filed seeking the relief of injunction.

3. However, it was observed by the Ld. Vacation Judge that the factum and date of death of the testator Sh. Rati Ram, which is integral part of cause of action has not been pleaded. Further, no death certificate of the testator has been placed on record. Hence, the plaint does not disclose a cause of action. Matter was, therefore, fixed for arguments on the aspect of maintainability of suit for 15.07.2020.
4. In the interim, counsel for plaintiff moved an application for urgent hearing. Therefore, the matter has been assigned for hearing to the undersigned by the Ld. Senior Civil Judge.
5. Counsel for plaintiff submits that the plaintiff is moving an application under Order VI Rule 17 of Civil Procedure Code for amendment of plaint along with copy of the death certificate of Sh. Rati Ram to remove the aforesaid defects. In the application, it has been averred that due to the filing of suit on urgent basis, inadvertently, Counsel for plaintiff did not mention about the factum and date of death of testator in the plaint. It has been further averred that Hon'ble Court was apprised about the said fact on 11.06.2020 itself. It has been pleaded that the if the amendments are not allowed, plaintiff would suffer irreparable loss which cannot be compensated in any manner.
6. Before proceeding to decide the application, it is pertinent to refer to the relevant law on the said aspect. Order VI Rule 17 of the Civil Procedure Code deals with the procedure for amendment of plaint. It reads as under:

“17 Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of detaining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

7. Thus, it is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.
8. Proviso to Order VI Rule 17 CPC to some extent curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier.
9. In **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons (2009) 10 SCC 84** Hon'ble Apex Court considered the scope of amendment of pleadings. In para 63, it concluded as follows: (SCC p. 102)
- “Factors to be taken into consideration while dealing with applications for amendments.*
- 63. On critically analyzing both the English and Indian cases, some basic principles emerge 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;*
 - (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.*

(7) These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

10. In view of the aforesaid principles, at the very outset, I must state that I am inclined to allow the present application for amendment of plaint. In my opinion, by way of the present application, the plaintiff is not introducing any new cause of action. Rather, the defects which inadvertently crept into pleadings are sought to be removed. The factum and date of death of death is integral part of cause of action. During arguments, it was submitted by counsel for plaintiff that inadvertently due to urgency the said facts were left from pleadings. The facts came to the notice of court on the first date of hearing itself. It is not the fault of the plaintiff who is an illiterate lady that her counsel did not plead the said facts. Trial has not commenced and the suit is at the initial stage. Even notice has not been issued to the defendant. Further, the amendments sought are imperative for effective and proper disposal of the suit. Denial of amendment would lead to injustice to the plaintiff. Hence, I deem it fit to permit the plaintiff to amend the plaint.

11. **Accordingly, application under Order VI Rule 17 CPC stands allowed. Amended plaint be taken on record.**

12. Now, moving on to the application for *ex-parte* ad-interim injunction under Order 39 Rule 1 and 2 of Civil Procedure Code. **Counsel for Plaintiff does not press the same and seeks that only notice of the suit be issued to the defendant.** He submits that contact details of defendant are available and he can be served through WhatsApp.

13. Submissions heard. Record perused.

14. Perusal of site plan annexed with the plaint shows that suit property has been shown as vacant land. However, as per plaint, suit property is a house bearing no 252, Gali no 6, Village Jagat Pur, Delhi. During arguments, I specifically enquired from the counsel regarding this. Counsel for plaintiff submitted that since

no draftsman is available due to pandemic, he has prepared the site plan by hand. He submits that he needs to take instructions in this regard and would file by a fresh site plan by tomorrow.

15. While this Court understands that due to pandemic, draftsman may not be available and therefore, precise site plan may not be possible. But the site plan filed must be consistent with pleadings and status of property as on date.
16. Accordingly, matter be listed for day after tomorrow i.e. 09.07.2020 at 12:30 pm for consideration.
17. Copy of this order by sent to counsel for plaintiff by e-mail as requested by him.

(Rupinder Singh Dhiman)
Civil Judge -06 (Central)/THC
07.07.2020