

Arvind Garg Vs. Neeta Singhal

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Court : Delhi

Decided On : Dec-06-2013

Judge : Jayant Nath

Appellant : Arvind Garg

Respondent : Neeta Singhal

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on :

22. 11.20113 Judgment Pronounced on:

06. 12.2013 + IA No.19812/2012 (u/O6R17CPC) in CS(OS) 347/2010 ARVIND GARG Through Plaintiff Mr. Lalit Gupta, Ms. Payal Gupta and Mr. P. Gautham, Advocates with plaintiff in person. versus NEETA SINGHAL Through Defendant Mr. Shoeb Shakeel and Mr. Shishir Kumar, Advocates CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

IA No.19812/2012 (u/O6R17CPC) 1. The plaintiff has filed the present suit for declaration, permanent and mandatory injunction against the plaintiffs wife, the defendant. The plaintiff contends that in the period 2002 to 2009 from his own source of income and funds, he purchased several movable and immovable properties. It is further averred that some of the immovable properties were purchased in the joint name with the defendant, his wife, while some properties were purchased in the single name of the defendant out of love and affection.

Hence, he has filed the present suit claiming exclusive ownership of the suit properties and seeking a declaration to declare him the owner of the said movable and immovable properties.

2. The present application is filed under Order 6 Rule 17 CPC for amendment of the plaint.

3. It is stated in the application that the plaintiff had filed IA No.13237/2010 under Order 1 Rule 10 CPC for impleadment of the daughter of the parties as a necessary and proper party. This application was allowed on 05.07.2011. It is stated that pursuant to impleadment of additional defendant under Order 1 Rule 10 CPC as a consequence thereof, the existing plaint requires to be suitably amended as provided under Order 1 Rule 10 (4) CPC. It is further stated that the defendant has in the written statement taken various objections.

4. It is further stated that in the given facts and circumstances, it is almost impossible to amend the existing plaint by adding and/or deleting paragraphs and/or lines in between. The plaintiff is stated to have filed an earlier application under Order 6 Rule 17 CPC for amendment of the plaint. However, it is stated that as this Court was of the view that the proposed amendment be specified in the application, hence the earlier application for amendment i.e. IA No.13238/2010 was withdrawn with leave and liberty to file a fresh amendment application.

5. The present application is now filed for seeking amendment of the plaint.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the plaintiff submits that the amendments which are now being sought are as a consequence of the addition of defendant No.2 as a party. It is further stated that no admission is sought to be withdrawn and no relief is sought to be added which is barred by time. Only an additional relief of possession is being sought. He also relies upon the judgment of the Supreme Court in the case of M/s. Estralla Rubber vs. Dass Estate (Pvt.) Ltd., AIR2001 SC3295 to submit that every amendment of pleading is to be allowed where such amendment is required for proper and effective adjudication of controversy between the parties

and to avoid multiplicity of judicial proceedings subject to certain conditions such as allowing amendment should not result in injustice to the other side, a clear admission should not be allowed to be withdrawn and a time barred claim cannot be allowed to be raised.

8. Learned counsel for the defendant has opposed the application and submitted that the proposed amendment seeks to amend every para of the plaint. The application does not mention which portion of the plaint is sought to be amended, what is being added and what is being deleted.

9. First I will deal with the submission of the learned counsel for the plaintiff, namely, that by the present amendment application, no relief which is barred by time is sought to be added, no admission is sought to be withdrawn and that the nature of the plaint after the amendments remain the same. Learned counsel for the defendant has controverted this contention. However, when it was requested to the learned counsel for the defendant to point out as to what portion of the proposed amendments tends to change the nature of the case, he was unable to do so.

10. But that does not settle the matter. The amendment as proposed virtually tantamounts to substituting the whole plaint with a virtually new plaint. A perusal of the proposed amendments would show that each and every para of the original plaint, namely, paras 1 to 18 are sought to be substituted by new paras. There is no attempt to point out what is sought to be incorporated in the proposed amendment. The lines, phrases and words which are being added or deleted have not been mentioned in the present application. It is not possible to decipher from a reading of this application as to what is being amended or what is being deleted or what is being added. What is mentioned in the application is the way in which the paras would be read after the proposed amendment is carried out. Hence, it is not possible to find out as to whether any new cause of action is being introduced, whether admission made is sought to be replaced, etc. It is also not possible to make out whether the proposed amendments are necessary for the purpose of determining the real questions in controversy between the parties.

11. Reference may be had to the judgment of the Full Bench of this High Court in the case of Kedar Nath & Ors. vs. Ram Parkash, 76 (1998) DLT755 In para 17 of this judgment, this Court held as follows:

17. Any party whether it be the plaintiff or the defendant proposing to make an amendment in his pleading must make an appropriate application setting out specifically, (i) the additional pleading sought to be added, (ii) the pleading sought to be deleted or altered, so that the Court may clearly form an opinion as to the nature and extent of the proposed amendment and its legal implications for the purpose of, exercising its discretionary jurisdiction of permitting or denying the prayer for amendment: Once an amendment is allowed, if the amendment be minor, negligible or clerical merely, such amendment may be incorporated in the original pleading by using red ink and certified by the Court Master or the Judge after being initialled and dated by the party making the same. If the amendment be substantial in character then an amended pleading should be filed setting out all the contents of the original pleading; therefrom scoring out by drawing a single line across such portions as have been deleted by the leave of the Court by using a red ink pen; and setting out the portions allowed to be added by the Court either by typing out in red ink or by highlighting the same in red or yellow. The utility of this practice is that while appreciating the case of a party, the Court can know what was the case originally pleaded by the party and what was the case pleaded by way of amendment. At times this would be immense utility to the Judge adjudicating upon the credibility of the case set out by the party going at the trial.

12. Reference may also be had to the judgment of the Honble Supreme Court in the case of Gurdial Singh vs. Raj Kumar Aneja, (2002)2 SCC445 In para 13, the Honble Supreme Court held as follows:13. Unless and until the court is told how and in what manner the pleading originally submitted to the court is proposed to be altered or amended, the court cannot effectively exercise its power to permit amendment. An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or claim barred by limitation, or, may be so devised as to deprive the opposite party of a valuable right accrued to him by lapse of time and so on. It is, therefore, necessary for an amendment applicant to

set out specifically in his application, seeking leave of the court for amendment in the pleading, as to what is proposed to be omitted from or altered or substituted in or added to the original pleading.

13. The Honble Supreme Court in the said judgment also took into account an amendment which is applicable in the State of Punjab and Haryana and the Union Territory of Chandigarh where Order 6 Rule 17 subclause 2 has been added which reads as follows:

17.(2) Every application for amendments shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading.

14. Hence in view of the said judgments, it is clear that when a party moves an application for amendment of pleadings, it must state what is proposed to be omitted, altered, substituted or added to the original pleadings. The present application makes no such effort.

15. Apart from the above, in my view, the amendment cannot even otherwise be allowed as it virtually tentamounts to changing the whole plaint with a new plaint.

16. Order 6 Rule 17 CPC provides as follows:

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 determining the real questions in controversy between the parties:

17. Hence, the aforesaid provision permits a party to alter or amend his pleadings. The meaning of alter in the Blacks Law Dictionary, Sixth Edition-1996 by Henry Campbell reads as follows:- Alter: To make a change in; to modify; to vary some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially. To change in one or more respects, but without destruction of existence or identity of the thing changed; to increase or diminish.

18. The meaning of amend in the Blacks Law Dictionary, Sixth Edition-1996 by Henry Campbell reads as follows:

Amend. To improve. To change for the better by removing defects or faults. To change, correct, revise.

19. What the plaintiff actually intend to do is not really alter or amend the pleadings but replace the entire pleadings with altogether new pleadings. In my view, complete replacement of old plaint with a completely new plaint is not permitted under Order 6 Rule 17 CPC. It may be possible to permit such a change in certain special circumstances under section 151CPC. But no such special circumstances are pleaded or argued.

20. The present application is completely without any merit. The same is hence dismissed. CS(OS) 347/2010 and I.A. Nos. 15151-52/2013 21. List on 30.01.2014 the date already fixed in the applications. JAYANT NATH, J.

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