

Dinesh Kumar @ Deepak Vs. Shiv Kumar and ors.

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Court : Delhi

Decided On : Aug-04-2014

Judge : Valmiki J. Mehta

Appellant : Dinesh Kumar @ Deepak

Respondent : Shiv Kumar and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) No.40/2014 4th August, 2014 % DINESH KUMAR @ DEEPAK Through:Petitioner Mr. Parthiv J Mehta and Mr. Vipul Dubey, Advocates. VERSUS SHIV KUMAR & ORS. Respondents Through: CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) CM No.778/2014(delay of 23 days) For the reasons stated in the application, delay of 23 days is allowed. CM stands disposed of. CM(M) No.40/2014 & CM No.777/14 (stay) 1. The challenge by means of this petition under Article 227 of the Constitution of India is to the impugned orders of the trial court dated 4.9.2012 and 21.9.2013 by which the trial court has passed orders for bringing on record ie substituting the applicants as plaintiffs in place of the existing plaintiffs. The applicants claimed that on them rights have devolved in terms of an MOU to which the existing plaintiffs are parties.

2. In para-9 of the impugned order dated 4.9.2012 the relevant clause of the MOU is reproduced and this para 9 reads as under:

9. The MOU as alleged by the applicants is filed on record. By going through the MOU it reveals that the plaintiffs have assigned their interest in favour of applicants. Para F of the MOU is relevant in this regard:

That it has further been agreed and decided by the parties that land involved in civil suit filed by the First Party against Avtar Singh, the lessee in respect of land underneath the superstructure shall remain the exclusive property of the First Party and the land involved in case title, Shiv Kumar & Anr., Vs. Dinesh Kumar in which Dinesh Kumar is leassess in respect of the land underneath the superstructure shall go to the Second Party and the Second Party shall be free to get their name substituted in place of the First Party in the Court, if they so desires.

3. Supreme Court in the case of Dhurandhar Prasad Singh Vs. Jai Prakash University & Ors., 2001 (6) SCC534 has held that there is no abatement when there is devolution of interest during the pendency of the suit under Order 22 Rule 10 CPC, and which position is unlike the one under Order 22 Rules 3 and 4 wherein there is an abatement. Therefore, with respect to an application under Order 22 Rule 10 CPC there is no limitation because there can be no abatement.

4. Learned counsel for the petitioner sought to place reliance upon a judgment of a learned Single Judge of this Court in the case of Lal Chand Public Charitable Trust Vs. Delhi Wakf Board & Ors. 189(2012) DLT397 to argue that the application under Order 22 Rule 10 CPC should be dismissed, including for delay and laches, however, each case depends on its own facts with respect to substitution on account of devolution, and in the present case, the MOU in question is dated 3.7.2008 and the application under Order 22 Rule 10 CPC was filed on 12.4.2012 and the existing plaintiffs are not opposing their substitution.

5. I may note that issue of delay and laches would arise if there is an interse contest between the existing plaintiff and those persons who are sought to be brought on record by an application under Order 22 Rule 10 CPC, however in the

present case, the existing plaintiffs are not disputing the case of the applicants in the application under Order 22 Rule 10 CPC. I therefore fail to understand as to how any prejudice will be caused to the petitioner/defendant by substitution of the plaintiffs, because all issues of merits will in any case be decided after trial in the suit and the defendant/petitioner can always prove his defence on merits for seeking dismissal of the suit.

6. Powers under Article 227 of the Constitution of India are extraordinary powers and meant to be exercised only if there is a gross injustice because of the orders passed by the trial court, but in the present case, there is no prejudice to the petitioner/defendant, and therefore, I do not find any reason to exercise discretionary jurisdiction under Article 227 of the Constitution of India. Dismissed.

AUGUST04 2014 ib CM(M) 40/2014

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