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Sher Singh & Ors vs.sumer Singh & Ors

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Court : Delhi

Decided On : May-26-2017

Appellant : Sher Singh & Ors

Respondent : Sumer Singh & Ors

Judgement :

$~65 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: May 26, 2017 CM(M) No.602/2017 SHER SINGH & ORS versus Through: Ms.Geeta Mehrotra, Advocate .....

... Petitioner
s Through: None SUMER SINGH & ORS CORAM: HONBLE MS. JUSTICE PRATIBHA RANI JUDGMENT (Oral) .....

... RESPONDENTS
CM No.20387/2017 For the reasons stated in the application, delay of 75 days in re-filing of the petition is condoned. The application stands disposed of. CM No.20386/2017 Exemption allowed, subject to all just exceptions. Application stands disposed of. CM No.20385/2017 1. This is an application filed on behalf of the petitioners seeking permission to amend memo of parties.

2. The prayer is allowed. Amended memo of parties filed along with the application is taken on record.

3. The application stands disposed of. CM(M) 602/2017 1. The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated CM(M) No.602/2017 Page 1 of 7 25th October, 2016 whereby the application under Order VI Rule 17 CPC filed by the respondents/plaintiffs has been allowed by learned Trial Court.

2. The impugned order dated 25th October, 2016 reads as under:-

"None for plaintiffs. None for defendants. CS SCJ2052014 260
SUMER SINGH ORS Vs. SHER SINGH ORS. 25.10.2016 Present: On the last date of hearing arguments on the application of the plaintiff under Order 6 Rule 17 CPC were heard. Apparently, plaintiffs want to incorporate facts/subsequent developments indicating purported encroachment over part of the suit property to the extent of 100 square yards, in their plaint. Application was opposed by the defendants stating that nature of suit shall change, if the application is allowed. However, bearing in mind the settled principles for deciding applications under Order 6 Rule 17 CPC, Court is of the opinion that the application of the plaintiff should be allowed as the matter is still at pre-trial stage and the endeavour of the Court should be discourage multiplicity of litigation between the parties by permitting them to incorporate all the reliefs arising out of the same cause of action or cause of action accruing on account of subsequent developments, in one suit. Application of the plaintiff is accordingly allowed. Let amended plaint be filed within 5 days from today. Put up for framing of issues on 15/11/2016. Sd/- Civil Judge(SW)/Dwarka Courts New Delhi/25.10.2016 Learned counsel for the petitioners has submitted that the amendment 3. CM(M) No.602/2017 Page 2 of 7 has been allowed by the Court despite the fact that relief of injunction in respect of the power of attorney sale through General Power of Attorney which was executed in December, 1982, was barred by limitation. The petitioners, after the execution of documents, have also constructed their house and are residing there.

4. Learned counsel for the petitioners has also challenged the order on the ground that the Civil Suit No.205/2014 (New No.26033/16) filed by the respondents/plaintiffs was not maintainable as they have no locus standi to file the suit and claim the relief as prayed. But ignoring all these aspects amendment has

been allowed. It has also been contended that the reliefs sought by way of amendment in respect of declaration is not arising out of the same cause of action but on account of the alleged subsequent development hence the impugned order is liable to be set aside.

5. In the decision reported as Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Ors., VII (2009) SLT537 the factors to be taken into consideration while dealing with the applications for amendments were summarized in para No.67 as under:-

"67. 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; CM(M) No.602/2017 Page 3 of 7

6.

(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. The grievance of the petitioner that the relief now allowed to be incorporated while allowing the application under Order VI Rule 17 CPC was barred by limitation. The legal position on this aspect has been dealt with by the Hon'ble Supreme Court in the decision reported as Sampath Kumar vs. Ayyakannu and Anr. AIR (2002) SC3369which reads as under: 10. An amendment once incorporated relates back

to the date of the suit However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. In the decision reported as Pankaja and Anr. Vs. Yellappa (D) by Lrs.

7. And Ors. AIR (2004)SC4102, the Hon'ble Supreme Court held as under: 12. So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue CM(M) No.602/2017 Page 4 of 7 of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case. judicious evaluation of in a the 15. This Court in the case of L.J.

Leach and Co. Ltd. & Anr. Vs. Messrs. Jardine Skinner and Co.-. A.I.R. 1957 S.C. 357 has held :-

""It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

16. This view of this Court has, since, been followed by a 3 Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board & Ors. 2004 (3) SCC392 Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice. CM(M) No.602/2017 Page 5 of 7 8. Reveting to the contentions raised by the petitioners, admittedly the trial has not commenced so far and the amendment has been sought by the respondents/plaintiffs on the plea of subsequent events detailed in para Nos.3 to 6 of the application under Order VI Rule 17 CPC.

9. The submission on behalf of the petitioner that the amendment which was barred by limitation, could not have been allowed by the learned Trial Court, cannot be a ground to interfere with the order impugned herein. However, it is noticed that vide impugned order, the learned Trial Court while allowing plaintiffs to file amended plaint within five days from the date of order, adjourned the case for settlement of issued for 15th November, 2016. Learned Trial Court after allowing the amendment, was required to give an opportunity to the petitioners to file amended written statement which was necessitated after the respondents/plaintiffs incorporated subsequent events and amended the prayer clause.

10. Although learned counsel for the petitioners has not made the prayer before this Court for grant of an opportunity to file the amended written statement after the plaint has been amended, in the interest of justice and to enable the petitioners/defendants to raise all the pleas/defence, an opportunity is given to the

petitioners/defendants to file the amended written statement enabling them to take all the objections including that of locus standi as well on the issue of limitation, within 30 days from the date of this order.

11. The impugned order does not require any interference to the extent that application under Order VI Rule 17 CPC was allowed thereby permitting the respondent/plaintiff to amend the plaint. However, as already noted, as opportunity to file the amended written statement has not been given to the petitioners/defendants, an opportunity is hereby given to the CM(M) No.602/2017 Page 6 of 7 petitioners/defendants to file the amended written statement. Thereafter, learned Trial Court should settle the issues. If issues have already been settled, then to settle the additional issues arising in view of the amended pleadings.

12. The petition stand disposed of in above terms.

13. A copy of this order be sent to the learned Trial Court for information and compliance and be also given dasti to learned counsel for the petitioners, as prayed. CM No.20384/2017 Dismissed as infructuous. MAY26 2017 pg PRATIBHA RANI, J.

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