

Sheila Khullar and anr. Vs. Rohini Khullar and ors.

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Court : Delhi

Decided On : Sep-29-1999

Reported in : 2000IIIAD(Delhi)341; 84(2000)DLT261

Judge : K. Ramamoorthy, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : C.R. No. 188 of 1999

Appellant : Sheila Khullar and anr.

Respondent : Rohini Khullar and ors.

Advocate for Def. : Mr. T.S. Ahuja and ; Mr. Ashok Arora, Adv.

Advocate for Pet/Ap. : Mr. P.K. Rawal, Adv

Judgement :

ORDER

K. Ramamoorthy, J.

1. The revision is filed by the defendants challenging the order of the lower Court dated 19.12.1998 rejecting their application for amendment of the written statement. The suit property is in Golf Link. One Khushi Mal had three sons namely, Pearey Lal, Amar Nath and Jagan Nath. The first petitioner is the widow

of Jagan Nath. Second petitioner is one of the sons of Jagan Nath. The 4th petitioner is another son of Jagan Nath.

2. The first respondent Rohini Khullar is the widow of late Prem Khullar, one of the sons of Jagan Nath. Second respondent Ms. Yogytata Khullar and third respondent Ms. Malavika Khullar are the daughters of the first respondent.

3. The first respondent filed the suit for injunction restraining the defendants in the suit from dealing with the property, subject matter of the suit.

4. Khushi Mal, the father of the three sons died on 8.7.1972. The suit property was owned by the partnership owned by the family in which the father and three sons were partners. After the death of Khushi Mal, on 26.5.1978 a family arrangement was made, according to the plaintiffs in and by which the suit property was to go to Jagan Nath and the first petitioner would have the right of enjoyment during her life-time. The defendants in the written statement did not say that the property was owned by a partner-ship in which Jagan Nath was a partner and, therefore, the plaintiffs being the heirs of Jagan Nath would have an interest in the property. In para 4 of the written statement it was alleged 'property in question belongs to the defendants and the plaintiffs have no right, title or interest whatsoever of any nature and she has no right to interfere in any manner.

5. The defendants filed an application under Order 6, Rule 17, CPC seeking to introduce that the property belonged to the partnership. The amendment proposed was:

'That the suit of the plaintiffs is not maintainable as it is submitted that the property No.125, Golf Link, New Delhi was purchased by M/s. Bihari Lal & Co. and a registered sale deed was duly executed by the previous owner in favor of M/s. Bihari Lal & Co. who is partnership firm and is owner of the said property. Moreover the said property was also mutated with NDMC as per law in the name of M/s. Bihari Lal & Co. Not only this, electricity and water connections are also in the name of said M/s. Bihari Lal Co. Taking from any angle the said property belongs to M/s. Bihari Lal & Co. and neither the plaintiff nor the defendants have any right and as such have no right to enter any agreement. Without prejudice to

the right of the replying defendants it is submitted that if any agreement is there as alleged, though denied, the same is void and not sustainable in the eyes of law as the defendants and the plaintiffs have no right to entry any such agreement in respect of the property which not belongs to them and as such the suit of the plaintiff is not maintainable and is liable to be dismissed with costs.'

6. The learned trial Judge by order dated 19.12.1998 dismissed the application for amendment.

7. The learned Counsel for the petitioner Mr. P.K. Rawal submitted that in case of amendment of written statement the lower Court should have taken a liberal view and the petitioners are only seeking to project the document which shows the ownership of the property by the partnership and, therefore, the amendment would not alter the basis of the claim of the defendants and the amendment sought for would enable the Court to adjudicate the disputes between the parties. The learned Counsel Mr.P.K.Rawal relied upon the judgments of the Supreme Court reported in Heeralal Vs . Kalyan Mal and Others, : AIR 1998 SC618 ; Panchdeo Narain Srivastava Vs . Km. Jyoti Sahay and Another, : AIR 1983 SC462 , and judgment of this Court reported in Mahinder Singh v. Iqbal Kaur 1995 RLR 469 and the decision in (1996) 3 CLT 187 wherein it is held that admission once made can always be explained.

8. It is not necessary to deal with these cases because on facts the arrangement projected by the plaintiff was in the year 1978. The plaintiff filed an application for amending the date of the arrangement and that was ordered on 12.3.1998 and that order had become final. Now the petitioners sought the amendment of the written statement making a different claim altogether while they had come forward with a specific case in the written statement that the plaintiffs had no right, title or interest in the suit property.

9. It has to be noticed that the family arrangement was in 1978, 6 years after the death of the father and in the written statement there has been a bald denial of the arrangement. The issue have been framed in the suit and those issues have to be decided in accordance with law. At this stage, the defendants cannot be permitted to introduce a new case with reference to the partnership of the property about

which they must have been well aware on the date when they filed the written statement. It appears that the defendants had filed the application just to protract the proceedings.

10. The principles laid down in the authorities cited by the learned Counsel for the petitioners do not at all apply to the facts of the instant case.

11. I do not find any error in the order passed by the lower Court.

12. Accordingly, the revision stands dismissed.

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