

Vimla Devi and anr. Vs. Surinder Kumar and ors.

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Court : Delhi

Decided On : May-01-1997

Reported in : 1997IVAD(Delhi)420; 67(1997)DLT728

Judge : J.B. Goel, J.

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

Appeal No. : Interim Application No. 6605 of 1996 and Suit No. 2981 of 1989

Appellant : Vimla Devi and anr.

Respondent : Surinder Kumar and ors.

Advocate for Pet/Ap. : J.R. Goel,; C.L. Itorora and; R.D. Itorora, Advs

Judgement :

J.B. Goel, J.

(1) This order disposes of the application of defendant No. 1 under Order 6 Rule 17, Civil Procedure Code seeking amendment of the written statement.

(2) Briefly the facts are that the plaintiffs have filed a suit against defendant No. 1 for possession of premises in property No. 97-D, Kamla Nagar, Delhi alleged to be in his unauthorised occupation and for recovery of mesne profits. Defendant No. 1 is contesting the suit and has filed the written statement. He has inter alias alleged

that he was inducted as a tenant on 1.11.1977 by late Shri Mangat Rai Gupta to whom rent was paid in cash but did not issue any receipts and after his death on 5.2.1977 his son Shri Radhey Shyam Gupta, defendant No. 2 has been Realizing the rent and has been issuing rent receipts; he was not in unauthorised occupation and was a lawful tenant. And in preliminary objection No. 1, he has taken the objection that the suit is barred under Section 50 of the Delhi Rent Control Act. This written statement was filed on 1.10.1990. On the basis of the pleadings, issues were framed on 22.10.1991 and thereafter the suit has been fixed on 3 occasions for trial. So far no evidence has been led and the present application was filed on 19th July, 1996.

(3) By this application the defendant wants to make amendment in the preliminary objection No. 1 to add that he was a tenant under late Shri Mangat Ram Gupta who did not issue any receipt to him or to other tenants in the premises in respect of the rent paid by them in cash and that several litigations in Civil Courts are pending against all those tenants, that after the death of Shri Mangat Rani Gupta on 5.12.1977, his son Shri Radhey Shayam Gupta, a co-owner of the property used to issue rent receipt to him.

(4) This application is being contested on behalf of the plaintiffs who have filed reply dated 25.2.1997, inter alia, on the ground that the proposed amendment is unnecessary because the facts and the plea sought to be added have already been taken in the written statement.

(5) I have heard the learned Counsel for the partics. Learned Counsel for the applicant has contended that by the proposed amendment no new case is being set up, the defendant wants to add additional facts in the preliminary objection No. 1 and it will not cause any prejudice to the plaintiffs. On the other hand, learned Counsel for the plaintiffs, has contended that the amendment is unnecessary and even otherwise defendants seek to withdraw admission already made by the defendant in the written statement.

(6) I have considered the contentions, perused the pleadings in the suit as well as the pleadings in the application. It is well established principle of law that amendment which is necessary for determining the real controversy in the suit

should normally be allowed. And an amendment which is not so necessary would normally be allowed. An amendment which is useless cannot be said to be necessary for determining the real question in controversy. Thus the governing consideration is how far if at all the proposed amendment is necessary to determine the real controversy involved between the parties. The Court has to be satisfied about the substantiality of the proposed amendment and an amendment would not be allowed where the application is either not in good faith and the other party is acting malafide or with ulterior motive to prolong the litigation.

(7) Material facts which the defendant wants to add in the written statement by this amendment have already been pleaded in paragraphs No. 7 & 9 of the written statement on merits. In preliminary objection No. 1 objection has also been taken that the defendant No. 1 is a tenant on a monthly rent of Rs. 40.00 and that the suit is barred under Section 50 of the Delhi Rent Control Act, 1958. By the proposed amendment the case of the defendant is not going to be improved in any respect whatsoever. The proposed amendment thus is unnecessary for deciding the controversy involved in the suit. The application has been filed after about six years of the filing of the written statement and after the case was fixed for trial on 3 occasions. Obviously, the amendment is not bonafide and is made with ulterior motive to prolong the litigation. The proposed amendment is thus disallowed and this application is hereby dismissed with costs. Costs assessed at Rs. 500.00 .

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