

K.C. Taneja Vs. Pramod Kumar Taneja

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Court : Delhi

Decided On : Dec-06-1996

Reported in : 1997IAD(Delhi)53; 1997(41)DRJ160

Judge : M.K. Sharma, J.

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

Appeal No. : Interim Application No. 2825 of 1995 and Suit No. 3354 of 1995

Appellant : K.C. Taneja

Respondent : Pramod Kumar Taneja

Advocate for Pet/Ap. : A.K. Sikri,; Shailesh Kapoor and; Ravi Gupta, Advs

Judgement :

M.K. Sharma, J.

(1) This order shall dispose of the application being I.A. No. 2825/1995 filed by the plaintiff under Order 6 Rule 17 Civil Procedure Code praying for amendment of the plaint. The plaintiff instituted the present suit for possession and mense profit against the defendant in respect of the portion occupied by the defendant on the first floor of the House No. E-341, Greater Kailash-II, New Delhi.

(2) The case pleaded in the plaint is that the plaintiff is the absolute and exclusive owner of the aforesaid property being House No. E-341, Greater Kailash-II, new Delhi. After the purchase of the aforesaid plot of land, the plaintiff through his financial resources and income constructed the house thereon which is two and a half storeyed building. The plaintiff is living in the said house Along with his wife and the youngest son ever since it was constructed by the plaintiff. One of the sons of the plaintiff, namely, the defendant has been living separately from the plaintiff since his childhood. The defendant got married in the year 1974 and he was staying in a flat allotted to him by the Delhi Development Authority at C-7/121, Lawrence Road, New Delhi. However, the defendant was transferred to Agra Region and accordingly the defendant requested the plaintiff that his family, namely, his wife and children as well as his aunt be allowed to be shifted temporarily to the first floor of the aforesaid property at E-341, Greater Kailash, New Delhi, which was lying vacant at that time with the clear understanding that the defendant would dispose of the flat at Lawrence Road and purchase some bigger flat and that when the defendant is re-transferred back from Agra Region to Delhi, he would shift to his own flat. Keeping in view the relationship in between the plaintiff and the defendant and also considering his immediate need, the plaintiff allowed the family of the defendant to shift to the first floor premises of E-341, Greater Kailash, New Delhi and since then, the defendant is residing in the said portion of the property, namely, first floor Along with his family consisting of his wife, two children-as well as his aunt. However, inspire of the request being made by the plaintiff, the defendant has not vacated the suit premises and accordingly, the present suit has been instituted.

(3) The defendant contested the aforesaid suit and filed a written statement contending, inter alia, that the suit property is a joint family property purchased out of the funds raised by sale of the ancestral properties and also through contribution made by the defendant as well. It is further stated that the said property was purchased for the benefit and encouragement of the family and the property being a joint family property, the defendant has a vested interest and right therein and is in rightful occupation thereof.

(4) On the basis of the aforesaid pleadings of the parties, this Court also framed issues on 1.8.1994. After framing of the issues as aforesaid, even dates of trial are fixed which is scheduled to begin on 9.3.1997.

(5) The plaintiff, however, has filed the aforesaid application under Order 6 Rule 17 Cpc seeking for amendment of the plaint. The plaintiff has sought for amendment of the plaint to the effect that the defendant was given on adoption as son to the plaintiffs sister as she had no issue and accordingly the defendant is the adopted son of the plaintiffs sister and her husband, who have become the adopted parents of the defendant. The reason for not stating the aforesaid facts in the plaint has been given by the plaintiff as that the plaintiff did not consider the same to be necessary at the stage of filing of the suit, since in any case the plaintiff happened to be the father of the defendant by birth and at that time the plaintiff did not readily have any documentary proof of the adoption as no formal adoption deed had been executed at the time of adoption. The aforesaid application seeking for amendment of the plaint filed by the plaintiff is contested by the defendant by filing a reply thereto.

(6) Mr. A.K. Sikri, counsel appearing for the plaintiff stated before me that the amendment sought for are necessary to clarify the question as to the adoption of the defendant in the plaint. He further submitted that the aforesaid amendment sought for does not change the nature and character of the suit and that the amendment is necessary in order to avoid multiplicity of proceedings and also for fair adjudication of the issues arising between the parties.

(7) The learned counsel relied upon the decision of the Supreme Court in Panchdev N arain Srivastava Vs Km. Jyoti Sahay and Another : AIR 1983 SC462 , wherein the Supreme Court has held that an admission made by a party may be withdrawn or may be explained away and therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn. Relying on the ratio of the aforesaid decision, the learned counsel submitted that by the present amendment sought for in the plaint, the plaintiff is making an endeavor to explain away the admission made in the plaint and, therefore, such an amendment could be granted by the Court.

(8) On the other hand, Mr. Ravi Gupta, counsel appearing for the defendant submitted that in the plaint, the specific case of the plaintiff is that the defendant is the son of the plaintiff and such an admission in the plaint cannot be withdrawn and thereby non-suit the defendant totally. According to the learned counsel, if the amendment is allowed, the same would amount to changing the nature and character of the suit itself. The defendant has categorically denied that he is the adopted son as alleged in the present application. Mr. Ravi Gupta, counsel further stated that the intention of the plaintiff in filing the present application is not to seek for any clarification, but in fact to incorporate new pleas, which even if assumed to be true, were within the knowledge of the plaintiff at the time of institution of the present suit and, therefore, the amendment prayed for could not be allowed as the same would change the entire complexion of the suit and would, if allowed, introduce a new case.

(9) The learned counsel relied upon various decisions including the decision of the Supreme Court in Jagan Nath (Deceased) Through LRs. v. Chander Bhan & Ors. reported in 36 (1988) D L T 267. In the said decision, it was held by the Supreme Court that in view of the admission in the written statement by the defendant that he was a tenant in the property in question, he could not subsequently be allowed to wriggle out of this situation and withdraw the admission. It was further held that if the amendment is allowed, they would take away valuable right of the other side and altogether a new plea would be raised, which cannot be permitted. In M/s. Modi Spinning and Weaving Mills Co. Ltd. and another Vs . M.S. Ladha Ram and Co. reported in : [1977]1SCR728 , the Supreme Court held that where the proposed amendment introduced an entirely new case seeking to displace the other side completely from the admission made therein, such amendment could not be allowed. The learned counsel also relied upon the decision of this Court in Balbir Singh Vs . Man Singh & Ors. reported in : 37(1989)DLT324 , wherein, a similar amendment sought for was rejected by this Court. In The Municipal Corporation of Greater Bombay Vs . Lal Pancham and others : [1965]1SCR542 , it was held that, if an amendment of plaint is sought for introducing a new case, amendment should not be allowed. Having regard to the law laid down by the Supreme Court and this Court as referred to above, let me examine as to whether the amendment sought for by the plaintiff in the present suit could be

allowed or not. I have perused the averments made in the plaint and I find therein that in the entire plaint including the 'Cause Title' thereof, the defendant has been described as the son of the plaintiff. Although it has also been averred therein that the defendant is staying away with the sister of the plaintiff, yet nowhere in the plaint there is a slightest hint stating that the defendant is not the son of the plaintiff. On the basis of the aforesaid averments made in the plaint, the defendant has submitted his written statement and on the basis of the pleadings of the parties, even the issues have been framed. Now by way of amendment, through this present application, the plaintiff has sought for to introduce a case that the defendant is not the son of the plaintiff in view of the alleged adoption of the defendant by his sister and, therefore, the defendant has no right and title to the suit property even if it is held by the Court to be an ancestral property. By the aforesaid proposed amendment, therefore, the plaintiff is trying to introduce a new case altogether which was not pleaded in the plaint at all. If the defendant was an adopted son of the sister of the plaintiff, the same definitely must have been to the knowledge of the plaintiff at the time of institution of suit itself and yet the plaintiff does not plead the same in the plaint. The aforesaid facts sought to be pleaded now being available and being within the knowledge of the plaintiff was not pleaded and the defendant filed his written statement on the basis of facts pleaded therein. Now to turn around and state that the defendant is not the son of the Plaintiff having been given away on adoption would compel the defendant to contest the suit on a new and fresh plea.

(10) Apparently, therefore, in my considered opinion, the plaintiff is trying to set up a new case to nullify the earlier admission made by him in the plaint that the defendant is his son. If the amendment as sought for is allowed, then the defendant would be compelled to change his entire defense which would cause prejudice to the defense of the defendant. Besides, the proposed amendment seeks to withdraw the admission of the plaintiff that the defendant is his son and is not by way of explaining the admission. The reasons cited by the defendant for seeking the proposed amendment that the plaintiff did not have enough documentary evidence in support of the plea at the time of filing of the suit does not appeal to me to be weighty and proper ground for not mentioning the plea at the stage of filing the suit itself.

(11) Accordingly, the prayer for amendment as sought for in the present application stands rejected and the application stands dismissed.

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