

Debamitra Sinha Vs. Harminder Singh

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Court : Delhi

Decided On : Mar-18-2013

Judge : Indermeet Kaur

Appellant : Debamitra Sinha

Respondent : Harminder Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:18.3.2013 FAO(OS) No.152/2013 DEBAMITRA SINHA Appellant Through: Mr.Avneesh Garg and Mr.Rahul Chauhan, Advocates. versus HARMINDER SINGH Respondent Through: None. CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

C.M. No.4623/2013 (exemption) Allowed subject to just exceptions. FAO(OS) No.152/2013 1 Vide impugned order dated 04.2.2013 the application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) seeking an amendment of his plaint had been allowed. The appellant/defendant is aggrieved by the said order. 2 A suit for recovery of possession, mesne profits had been filed by the plaintiff Harminder Singh against Debamitra Sinha who is stated to be in illegal and unauthorized occupation of the ground floor, mezzanine floor and one garage of the property bearing No.7-A/73-A, Western Extension Area, Karol Bagh, New Delhi (hereinafter referred to as the

suit property). The mother of the plaintiff was the owner of the suit property and after her demise the plaintiff has become the owner. During the lifetime of his mother she had inducted A.N.Sinha as a tenant in the suit property. After the demise of A.N.Sinha his wife Rani Sinha was allowed to remain in the suit property till the time of her death which was on 31.7.1992. The present defendant Bebamitra Sinha who is the son of late A.N.Sinha is stated to be in illegal occupation of the suit property. 3 The present suit was filed on 29.8.2007. Written statement was filed refuting allegations made in the plaint. 4 In the course of the proceedings on 09.5.2012 the present application seeking amendment of the plaint was filed. Certain inadvertent typographical errors were stated to have been made in the plaint, which required amendment. It was further averred that the property has since been mutated in the name of the present plaintiff in the municipal records on 31.5.2010 and this being a subsequent fact also has to be brought to the notice of the court. These averments are contained in para 1 and para 2 of the proposed amended plaint. Learned counsel for the appellant has no objection qua these amendments. Qua para 3 and para 4 his submission is that the amendments sought for will disturb the vested rights which have since accrued to the appellant; his submission being that that facts which were in the knowledge of the plaintiff prior to the filing of the suit are now sought to be brought on record, submission being that the fact that the defendant was living separately away from his parents A.N.Sinha and Rani Sinha was well within the knowledge of the plaintiff and this plea now sought to be raised by way of amendment in this factual scenario necessarily has to be denied. 5 The reply filed to this application has also been perused. Defence of the appellant in this application is largely bordered on the submission that the averments made in the application are incorrect and baseless, they being afterthoughts; amendment should not be allowed. 6 The law of amendment is well settled. The rightness and wrongness of a plea sought to be set up in the application seeking amendment is not to be considered at the stage of deciding such an application. The primary duty of the court is to judge whether such an amendment is necessary to decide the real controversy raised between the parties; the law of amendment being a hand maid of the procedural law if in the balance of interest vis--vis the parties before the court, it subserves the ends of justice; is made bonafide; is not with the purpose to delay trial, the amendment

should by and large be allowed. It was these parameters which had weighed with the Court while allowing the aforesaid application. 7 Impugned order does not suffer from any infirmity. The present petition is nothing but an abuse of the process of the court. It is accordingly dismissed with cost of Rs.10,000/- to be deposited with the Delhi High Court Mediation and Conciliation Centre within 15 days. A copy of this order be sent to the Delhi High Court Mediation and Conciliation Centre. C.M. No.4624/2013 (for stay) 8 In view of the order passed in the appeal, this application has become infructuous. It is accordingly disposed of. **INDERMEET KAUR, J.**

SANJAY KISHAN KAUL, J.

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