

(2011) 05 DEL CK 0480

Delhi High Court

Case No: CM (M) No. 155 of 2011

Sh. Vijay Kumar Bhan

APPELLANT

Vs

Sh. Manoj Kumar and Others

RESPONDENT

Date of Decision: May 19, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, Order 7 Rule 14
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Sangeeta Jain, for the Appellant; Javed Ahmad and Eram Khan, for the Respondent

Judgement

Valmiki J Mehta, J.

Caveat No. 123/2011 in C.M.(M) No. 155/2011

Counsel for the caveat or has entered appearance and thus the caveat stands discharged.

C.M. No. 2952/2011 (exemption) in C.M.(M) No. 155/2011

Exemption allowed subject to just exceptions. Application stands disposed of. + C.M.(M)

No. 155/2011 and C.M. Nos. 2951/2011 (stay)

1. The challenge by means of this petition under Article 227 of the Constitution of India, is to the impugned order dated 3.12.2010 which has dismissed the application of the Petitioner/Plaintiff under Order 6 Rule 17 of Code of Civil Procedure, 1908 (CPC) by which the Petitioner was seeking to add in para 4 of the plaint certain averments with respect to four documents dated 3.10.1988 i.e. an agreement to sell, affidavit, Will and a general power of attorney.

2. The disputes in the present case pertain to the property WZ-123 (D-58), Raj Nagar, Part-II, Palam Colony, New Delhi admeasuring 100 sq. yards. The Plaintiff put up a case in the plaint that this property was purchased jointly by the Petitioner/Plaintiff/son alongwith his father Sh. Govind Ram Bhan. After making this averment in para 4 of the plaint the Plaintiff/Petitioner in support of the averment with respect to the joint ownership with his father also relied upon documents being agreement to sell/receipt dated 3.9.1988, registered receipt dated 3.10.1988 and general power of attorney dated 28.12.1988 in favour of the father Sh. Govind Ram Bhan.

3. The Plaintiff in the original plaint claimed that the Defendant/brother/Respondent No. 1 was in illegal possession of the property and therefore the relief of partition and possession was claimed in the suit. The case set up in the plaint was therefore of ownership of 50% of the property plus also a share from the undivided interest of the father late Sh. Govind Ram Bhan as one of his legal heirs.

4. In the suit, the Petitioner/Plaintiff had earlier filed an application under Order 7 Rule 14 CPC to put on record the aforesaid four additional documents dated 3.10.1988 and which application was dismissed by the trial Court.

5. The Petitioner challenged that order dismissing the application under Order 7 Rule 14 CPC in this Court and the petition being C.M.(M) No. 220/2010 was dismissed by a learned Single Judge of this Court dated 3.5.2010, subject to certain observations. This Court vide its order dated 3.5.2010 sustained the order of the trial Court dismissing the application under Order 7 Rule 14 CPC by observing that since there was no averment in the pleadings with respect to the four additional documents dated 3.10.1988 which were sought to be produced, the application for production of such documents could not be allowed. The learned Single Judge of this Court, however, by the order dated 3.5.2010 deleted the findings/observations of the trial Court with respect to manipulation/forgery of the four documents dated 3.10.1988.

6. After passing of the said order dated 3.5.2010 the Petitioner moved an application under Order 6 Rule 17 CPC before the trial Court and which has been dismissed by the impugned order. By the application the Petitioner sought to amend para 4 of the plaint to include reference to the four additional documents dated 3.10.1988. The trial Court has dismissed the application on the ground that as per the amended provision of Order 6 Rule 17 CPC amendment cannot be allowed after commencement of trial and also considering the fact that no valid explanation was given by the Petitioner for how adding the facts which were sought to be added.

7. A resume of the above facts shows the following:

(i) The Petitioner/Plaintiff in the plaint originally laid out a case of joint purchase, and therefore joint ownership, of the suit property with his father. For this purpose reliance was placed upon three documents dated 3.9.1988, 3.10.1988 and

28.12.1988. The plaint however makes it quite clear that what was pleaded was joint ownership of property with the father on account of having jointly purchased the same.

(ii) When the earlier application under Order 7 Rule 14 CPC was dismissed by the trial Court, and which order was upheld by the High Court in its order dated 3.5.2010, para 14 of the High Court order had observed that the documents are not allowed to be produced because there is an absence of specific averment in the plaint with respect to the additional documents which are sought to be produced.

(iii) The learned Single Judge of this Court vide its order dated 3.5.2010 set aside the findings of the trial Court by which it was held that documents were not genuine/fabricated/forged inasmuch as such an issue could not have been decided in a summary manner by means of the application and replies supported only by affidavits.

8. In my opinion, the trial Court has fallen into an error in dismissing the application for amendment. The law with regard to amendment is well-settled that merits of the matter are not to be looked into at the time of allowing of the amendment. By an amendment only the plea/pleadings is put forth, and it is not as if such plea/pleadings is accepted as correct. Once an amendment application is filed, the opposite party will have an opportunity not only to deny such pleadings and to effectively reply the same but also thereafter to disprove the case as set up in the amended pleadings by leading its evidence. To disallow the amendment application by holding on merits that documents are forged and fabricated would be to pre-judge the issue and therefore the learned Single Judge of this Court on 3.5.2010 rightly set aside the findings of the trial Court which held that the four documents dated 3.10.1988 cannot be brought into evidence because they are forged/fabricated/manipulated.

9. Learned Counsel for the Respondents very vehemently opposed the petition and raised three basic points:

(i) The trial Court has rightly relied upon various Supreme Court judgments which show that amendment ordinarily should not be allowed after commencement of trial and trial had commenced in the present case inasmuch as the Petitioner had already filed his affidavit by way of evidence.

(ii) Allowing of the amendment application would mean withdrawal of admission by the Petitioner/Plaintiff.

(iii) Allowing of the amendment application would be to indirectly set aside the order of learned Single Judge of this Court dated 3.5.2010 passed in C.M.(M) No. 220/2010 because the very documents which were not allowed to be produced would now be allowed to be produced.

10. In my opinion, all the contentions as raised by the counsel for the Respondent are misconceived and are liable to be rejected. Firstly, the trial Court while relying upon the Supreme Court judgments that amendment should not be allowed after trial had commenced has also observed that however once necessary explanation is given then in certain facts and circumstances, amendment can be allowed. In the present case the Petitioner sought amendment of the plaint on the stated facts that knowledge of four documents dated 3.10.1988 came to his knowledge much after filing of the suit in the year 2006 i.e. only in 2008. Surely, this was a subsequent fact, and which if correct, and with respect to which I am not entitled to give a finding for the present that it is not correct, are good enough circumstances so as to bring the case within exception to the general rule of disallowing of the amendment after commencement of trial. Once there are sufficient reasons given, and in this case sufficient reasons are those of coming to be know the existence of the documents after the commencement of the trial, in my opinion, is a just and sufficient ground to allow the amendment. To disallow the amendment would be to pre judge the case by holding on merits that what the Petitioner/Plaintiff said about discovery of documents in the year 2008 is false. I may hasten to add that it is still open to the Respondent No. 1/Defendant No. 1 during course of trial to show that the Petitioner/Plaintiff has been telling lies and that not only the documents are forged/fabricated/manipulated but also the story put up of the discovery in the year 2008 is not correct because such story was put up to bring on record the forged/manipulated documents. However, this is an issue which will be considered at the stage of final judgment after trial i.e. evidence is led by both the parties and the respective witnesses have been cross-examined. At this stage, it cannot be said that the explanation as put forth by the Petitioner should be summarily rejected.

11. Secondly, in my opinion, the stand of the learned Counsel for the Respondent No. 1 that by allowing of the amendment, admission will be withdrawn, is bereft of reasoning. This is because the original case was of joint ownership through joint purchase by the Petitioner with its father and today also after amendment, the case will remain of joint ownership on account of joint purchase of the property by the Petitioner with his father. Only what has been done is that documents are being filed in support of the pleadings. Surely, there is a difference between pleading and proof. The stage of proof comes subsequently to the stage of pleadings.

12. So far as the third argument that allowing of the amendment would mean to indirectly set aside the order dated 3.5.2010 passed in C.M.(M) No. 220/2010, I need only to reproduce only first three lines of para 14 of the order dated 3.5.2010 and which read as under:

14. Consequently, this Court is of the view that in the absence of a specific averment in the plaint in relation to the GPA dated 3rd October 1988, the agreement to sell dated 3rd October 1988, the Will dated 3rd October 1988 and the affidavit dated 3rd October 1988, and a further averment that they were not in the Plaintiff's

possession and were therefore not being produced, the Plaintiff cannot be permitted to produce those documents subsequently.

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Clearly, the order dated 3.5.2010 disallowed the bringing on record the documents because there was no such pleading. That does not however mean that the Petitioner thereafter cannot amend his pleadings so as to bring his pleading in the line of the documents which he seeks to produce. In my opinion, the documents which are now sought to be produced viz the four documents dated 3.10.1988 are in fact only the proof with respect to the averments of the joint ownership of the Petitioner with his father.

13. In view of the above, the petition is allowed. The impugned order dated 3.12.2010 is set aside. The amendment application dated 2.6.2010 which was filed by the Petitioner to amend para 4 of the original plaint, and which amended para is contained in para 22 of such application is allowed. The amended plaint be now filed before the trial Court within a period of four weeks from today inasmuch as I am informed that the next date of hearing is 12.7.2011. Needless to say that nothing contained in this order will amount to reflection on merits of the case of either of the parties and trial Court will decide the suit in accordance with law uninfluenced by any observations if any made qua merits in the present order. The Respondent No. 1/Defendant No. 1 will also be fully entitled to put up its own case in response and thereafter disprove the case as set up in the amended plaint after filing its amended written statement.

Petition and application are accordingly disposed of.