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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 19th March, 2025*

+ CM(M) 1109/2015 & CM APPL. 26389/2015

INDER RAJ (DECEASED THR LRS)Petitioner

Through: Mr. Madan Lal Sharma with
Mr. Amit Kumar, Advocates.

versus

MALIK CHAND GROVER & ORSRespondents

Through: Mr. M K Singh, Advocate for
respondent No.3
Ms. Puja S. Kalra, Advocate for
respondent No.4.
Mr. Sunil Dalal, Sr. Advocate with
Mr. J Singh, MR. Bhusahn Arora,
Mr. Shryas Malik, Ms. Saumitra
Saxena, Mr. Nikhil Beniwal,
Mr. Navish Bhati, Ms. Shipra Bali
and Ms. Riya Rana, Advocates for
respondent No.5.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is *successor-in-interest* of original plaintiff Sh. Inder Raj and is aggrieved by order dated 07.09.2015 passed by learned Trial Court whereby application moved by the plaintiff under Order VI Rule 17 CPC has been dismissed.
2. Let me give a very brief factual matrix of the case.
3. Sh. Inder Raj (original plaintiff) and Sh. Malik Chand Grover (original defendant No.1) were real brothers.
4. Plaintiff had filed a suit seeking declaration, cancellation of sale deed and permanent and mandatory injunction.



5. According to plaintiff, Plot No. A-20, W.H.S. Timber Block, Kirti Nagar, was jointly allotted to him and his said brother i.e. defendant No.1 by DDA in the year 1982.
6. The allotment was by virtue of a *perpetual lease deed*.
7. Since the allotment was joint, plaintiff and defendant No.1 became owner of half share each of the abovesaid plot i.e. in equal proportions. According to plaintiff, defendant No.1, however, occupied an area of 270 sq. yards and started doing business in such area whereas the area which came to his occupation was mere 180 sq. yards.
8. The plaintiff also asserted that since the lease was in joint names, as per the terms of the lease deed, the property could not have been sold or transferred without permission of plaintiff or, for that matter of DDA, to anyone. Moreover, being a joint owner, he had right of pre-emption.
9. Without elaborating further details and averments made in the suit, according to petitioner, the abovesaid portion in occupation of defendant No.1 had been sold/transferred by him to defendant No.2 Kuldeep Kaur (who also subsequently transferred the same to defendant No.5) and it was in the abovesaid backdrop that while challenging such sale deed dated 23.02.2005, the suit was filed in the year 2005 itself, with the following prayers:-

“i. *Declaring that the following alleged documents in regard to the property No. A-20, W.H.S., Timber Block, Kirti Nagar, New Delhi and more specifically shown in RED COLOUR in the Site Plan filed herewith, all under signatures of Defendant no.1 :*

- a. *Agreement to Sell 23.02.2005;*
- b. *G.P.A. dated 23.02.2005;*
- c. *S.P.A. dated 23.02.2005.*
- d. *Any other documents or Sale/Transfer is executed by the Defendant no.1*



- are neither valid nor binding upon the plaintiff, and have been executed as a result of a fraud perpetrated by the Defendants no.1 and 2.*
- ii. Declaring that property known as No. A-20, W.H.S., Timber-Block, Kirti Nagar, New Delhi and more specifically shown in RED COLOUR in the Site Plan filed herewith, is owned by the Plaintiff and Defendant No. 1 and its title thereto has not been divested by the acts of Defendant no. 1*
 - iii Restraining the Defendants No. 1 and 2 from further selling mortgaging, alienating, letting or creating any third party interest over property No. A-20, WHS, Timber Block, Kirti Nagar, New Delhi and more specifically shown in RED COLOUR in the Site Plan filed herewith,*
 - iv Pass a decree of Mandatory directing the Defendant no. 1 and 2 to handover the original lease deed, C Form, D form and other documents regarding the property in question and to restore the physical possession of the property No. A-20, WHS, timber Block, Kirti Nagar, new Delhi and more specifically shown in RED COLOUR in the Site Plan filed herewith, as it was before 23.02.2005 and the Defendant no.4 may kindly be directed to remove all illegal and unauthorized construction over the suit property.*
 - v. The Defendant no. 1 be directed to execute necessary documents of transfer of the property in question in favour of the Plaintiff, as the Plaintiff is having the right of pre-emption being the co-lessee of the property in question.*
 - v. Any other order or orders relief or reliefs as the Hon'ble court deem fit and proper under the circumstances of the whole case may also kindly be awarded in favour of the Plaintiff.*
 - vi. Cost of the suit and such other relief as the court deems proper, be also awarded."*

10. It will also be important to mention that during pendency of the abovesaid suit, plaintiff sought amendment, the first one, in the plaint by filing an application on 10.12.2007. Such amendment was allowed by learned Trial Court. Thereafter, plaintiff, again, moved an application seeking amendment in the plaint and even such amendment was allowed.

11. The case, eventually, reached the stage of final arguments and when



the Court had started hearing final arguments, yet another application was moved by the plaintiff seeking amendment in the suit and the subject matter of the present petition is rejection of the abovesaid application.

12. Before touching other aspects of the controversy in hand, it needs to be highlighted that by virtue of proposed amendment, plaintiff is seeking incorporation of several paragraphs in his plaint and is also seeking additional prayers to the following effect:-

“vii) The decree of declaration may be passed in favour of the plaintiff and against the defendants whereby the Order of the L.G. dated 29.08.2007 be declared null and void whereby the sub-division of plot no. A-20, W.H.S. Timber Market, Kirti Nagar, New Delhi, measuring 450 sq.yds. in two portions i.e. 180 sq.yds. in favour of plaintiff given no.A-20/B and 270 sq.yds. in favour of defendant no.1 giving no.A-20/A respectively, be declared as illegal, invalid, unlawful and not binding upon the plaintiff.

viii) A decree of declaration may be passed in favour of the plaintiff whereby plaintiff be declared as co-owner to the extent of half share in the entire property bearing no. A-20, W.H.S. Timber Market, Kirti Nagar, New Delhi.

ix) That the Conveyance Deed dated 22.01.2010 in favour of defendant no.2 beyond the area measuring 225 sq.yds. and/or to be extent of 45 sq.yds. of the property be declared as illegal and invalid and consequently the sale deed dated 03.07.2010 beyond the area of 225 sq.yds. as regard 45 sq.yds. of the property of the plaintiff in respect of the property bearing no. A- 20, W.H.S. Timber Market, Kirti Nagar, New Delhi, be declared null and void and not binding upon the plaintiff.

x) A decree of partition may be passed in respect of the property No.A-20, W.H.S. Timber Market, Kirti Nagar, New Delhi measuring 450 sq.yds. whereby the half share of the plaintiff may be ordered to be adjudicated upon and determine in accordance with law pursuant to the preliminary decree of partition and a final decree may be passed whereby the property bearing no. A-20, W.H.S. Timber Market, Kirti Nagar, New Delhi measuring 450 sq.yds. be divided by metes and bounds and separated half share of property measuring 225 sq.yds. may be allocated to the plaintiff alongwith the possession.”



13. Learned Trial Court, while rejecting the amendment, observed that the abovesaid application had been moved, when the case was pending for final arguments and instead of, advancing the final arguments, the plaintiff had filed the abovesaid application whereby he, primarily, wanted to incorporate certain prayers and certain events relating to order dated 29.08.2007 passed by Hon'ble Lieutenant Governor of Delhi and, *inter alia*, wanted to incorporate the relief related to partition by *metes and bounds* with respect to the Kirti Nagar property.

14. After considering the legal principles, which any Court is always required to keep in mind while dealing with any such application seeking amendment in the pleadings, learned Trial Court dismissed the application while observing as under:-

*“(14) Applying the settled principles of law to the facts of present case, at the very **Outset** I may note that it is an admitted case of the plaintiff that application has now been filed on 17.8.2015 when the case was listed for final arguments. The perusal of the record shows that the first time the case was listed for final arguments on 24.1.2015 by the order of Ld. Predecessor of this Court and now it is in the month of August that after the case has been received by this court by way of transfer and was listed for filing of the written memorandum of arguments, that this application has been filed by the plaintiff at this belated stage when the trial is virtually concluding.*

*(15) **Secondly** it is also an admitted fact that the order of the Hon'ble Lt. Governor, Delhi, was of the year 2007 i.e. dated 29.8.2007 which the applicant/plaintiff is seeking to challenge in the month of **August 2015** by seeking to bring the same on record vide this application for amendments. No explanation is forthcoming as to why the applicant/plaintiff has **waited for almost eight years** to file the present application for seeking to bring this on record of this court if it was relevant.*

*(16) **Thirdly** it is submitted by Ld. Counsel for the defendant and not denied by the Ld. Counsel for the applicant / plaintiff that this order of **Hon'ble Lt. Governor, Delhi, dated 29.8.2007** had already been agitated previously in **WP (C) No. 7671/2007** which was dismissed by the **Hon'ble Delhi High Court** vide detailed order dated **5.8.2008 (Ex.***



PW1/D5X18) which was further challenged by the plaintiff before the **Hon'ble Division Bench** in **LPA No. 740/08** and was **dismissed** vide order dated **1.12.2008 (EX.PW1/D5X19)** against which **SLP No. 2632/09** was filed which was **dismissed** vide order dated **19.10.2009 (Ex.PW 1/8)**. All these orders and judicial proceedings form a part of judicial record before this court but for the reasons best known to the plaintiff, the fact regarding these judicial proceedings do not find a mention in the present application seeking amendments, which appears to be deliberate.

(17) **Fourthly** in so far as the proposed amendments in **Para 24 E to H** are concerned, as pointed out by the **Ld. Counsel** for the defendant, the said facts already find incorporated in the **plaint** and hence the necessity of re-agitating the same by way of the proposed amendments by re-wording the same, does not arise. The proposed **Paragraph No. 24 E** is already part of pleadings in the **Plaint** and its contents are incorporated in **Para 6**; the contents of proposed **Paragraph No. 24 H** are already a part of existing **Para 20** of the **Plaint** and contents of proposed **Paragraph No. 24 I** are already part of existing **Para 20** of the **Plaint**. The remaining proposed paragraphs are simply a challenge to the order of the **Hon'ble Lt. Governor, Delhi, dated 29.8.2007** and any declaration upon this order as regards its legality should have been made within the period of limitation, which has not been done.

(18) **Lastly** I am informed that by way of the impugned orders which is now proposed to be challenged, the plaintiff had exhausted all his legal remedies in respect of the same in the year 2010, I fail to understand as to why the same are being agitated now in this application under **Order 6 Rule 17 CPC**.

(19) It is writ large from the aforesaid discussions that not only has the plaintiff failed to place before this court the circumstances showing that in spite of his due diligence, he could not raise the matter before the Commencement of trial in the present suit which was filed in the year 2005 but also failed to explain and justify as to how the proposed amendments are necessary for determining the real question of controversies between the parties and that too after the plaintiff had exhausted the other legal remedies available to him and having already challenged the order of the **Hon'ble Lt. Governor, Delhi, dated 29.8.2007** by way of which the suit property had been sub-divided between the plaintiff and the defendant no. 1 in **Writ Jurisdiction**. Here I may also observe that the directions of the **Hon'ble Supreme Court** in the **SLP** are very clear. While dismissing the **SLP**, it was observed that the order of the **Hon'ble High Court** and **Hon'ble Supreme Court** will not come in the way of the present suit but it does not imply that the plaintiff can be permitted to re-open the entire issue which had already been dealt with considered and adjudicated upon by the courts of competent jurisdiction, so as to frustrate the earlier proceedings. There has to be a finality to the



judicial proceedings and merely by playing with the words the plaintiff cannot be permitted to continue with the litigation endlessly in the manner in which it is sought to be done.

(20) In this background, I find no merits in the application under Order VI Rule 17 CPC filed on behalf of the plaintiff. The same is hereby dismissed. Only two weeks time is being granted to the plaintiff to now place on record the detailed issue wise written memorandum of arguments with advance copy to the counsel for defendant and soft copy to the court. Case be listed for oral arguments thereafter on 24.11.2015.”

15. Sh. Madan Lal Sharma, learned counsel for the petitioner, in his usual humble and modest style, submits that there is no new cause of action which is being sought to be introduced by the proposed amendment. He submits that all the material facts are, virtually, on record already and it was on account of the naive drafting and inadvertent negligence on the part of the then counsel, that certain prayers, imperative in nature, could not be incorporated. He submits that by incorporating the above said prayers, the nature of the suit is not going to be changed, even a bit. So much so, according to him, there is no requirement of even leading any additional evidence or, for that matter, of modifying or adding any additional issue and the learned Trial Court, on the basis of the evidence already led before it, can pass appropriate orders in terms of proposed prayers.

16. He, in all fairness, does admit that petitioner should have been careful in the first instance but relying upon *Pirgonda Hongonda Patil vs. Kalgonda Shidgonda Patil: AIR 1957 SC 363*, *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited: (2022) 16 SCC 1* , *Vineet Kumar vs. Mangal Sain Wadhera: (1984) 3 SCC 352*, *Sehdev Seth vs. Smt. Vidyawati Seth and Another, 1974 SCC OnLine Del 13*, *Nanda Moharana vs. Lakshman Moharana and Others: 1972 SCC OnLine Ori 83*, *B.K. Narayana Pillai vs. Parameswaran Pillai and Another, (2000) 1 SCC 712*, *Surender*



Kumar Sharma vs. Makhan Singh: (2009) 10 SCC 626, Mahila Ramkali Devi and Others vs. Nandram (D) Thr. Lrs. & Others.: (2015) 13 SCC 132 and Jai Ram Manohar Lal vs. National Building Material Supply: (1969) 1 SCC 869, it has been supplemented that mere delay in seeking amendment would not be a ground to decline amendment when such amendment is, even otherwise, necessary for deciding the real controversy between the parties. He also submits that a party cannot be penalized for negligence or inaction on the part of previous counsel. He also submits that amendment can be disallowed if it has the potential of changing the cause of action or nature of case but in the case in hand, the amendment does not constitute addition of any new cause of action and, therefore, learned Trial Court should not have disallowed the amendment.

17. It is also asserted that there is nothing which may indicate that any kind of prejudice to opposite side by the proposed amendment. He echoes that, admittedly, there was no one to prevent plaintiff to make appropriate request at the earliest but since all the facts, germane to decide the controversy in question, have already been duly highlighted in the plaint itself, mere addition of few prayers would not cause any kind of prejudice to the respondents.

18. All such contentions have been refuted by Sh. Sunil Dalal, learned Senior Counsel for respondent No.5, who has purchased the property from defendant 3 Kuldeep Kaur. It may be reiterated that the area which was under the occupation of original defendant No.1 i.e. Sh. Malik Chand Grover was, allegedly, transferred by him in favour of Smt. Kuldeep Kaur (original defendant No.2) and, thereafter, in favour of M/s R.R. Builders & Furnishers Pvt. Ltd. (defendant No.5).



19. Though DDA is duly represented and has contested the present petition but no one appeared on behalf of *successor-in-interest* of Sh. Malik Chand Grover (respondent No.1 herein) or, for that matter, from the side of Smt. Kuldeep Kaur (respondent No.2 herein)

20. Sh. Sunil Dalal, learned Senior Counsel for respondent No.5, asserts that there is no substance in the petition and that the learned Trial Court has given cogent reasons while dismissing the application. Contending that there is nothing new which has been pleaded and since all the facts were well within the knowledge of plaintiff, the petition should be dismissed.

21. It is also submitted by him that plaintiff and defendant No.1, the two brothers, were earlier having a 500 sq. yds. plot in Motia Khan, Delhi which was, admittedly, in their respective occupation in the proportion of 200 and 300 sq. yds. They applied for a plot under the *Relocation Scheme* of DDA and were allotted a 450 sq. yds. i.e. Plot No. A-20, W.H.S., Timber Block, Kirti Nagar, New Delhi in the same ratio i.e. 2:3 i.e. 180:270 sq. yds. They made construction over their respective portions and were occupying such portions, ever since. On 23.02.2005, defendant No.1 sold his 270 sq. yards to defendant No.2 and handed over possession to him. The property was even converted to freehold and, eventually, *vide* registered *sale deed* dated 30.07.2010, defendant No.2 transferred the same in favour of the respondent No.5 herein. He also argues that by virtue of an administrative Order passed by the Hon'ble Lieutenant Governor of Delhi, sub-division of the plots, pursuant to which the plots were renamed 20A and 20B admeasuring 270 and 180 sq. yds. respectively, was approved. Such Order was challenged by the Petitioner in W.P. No. 7671 of 2007 which was dismissed *vide* order dated 05.08.2008. Thereafter, LPA was filed which was dismissed *vide*



order dated 01.12.2008 and, then, even the SLP filed by the plaintiff was dismissed on 19.10.2009. It is contended that all these facts were already in the knowledge of the plaintiff and he did not care to move any application all these years and, therefore, he cannot be given any indulgence.

22. Though, the court should be, generally, liberal in approach and if proposed amendment seems necessary to decide real disputes and controversy between the parties, it can be allowed even if there is delay in moving such application. In *LIC v. Sanjeev Builders (P) Ltd.: 2022 SCC OnLine SC 1128*, it has been observed that where amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the request for amendment should be allowed. It also lays down that where amendment is only with respect to the relief in the plaint and is predicated on facts which are already pleaded, ordinarily, the amendment should be allowed. However, at the same time, there cannot be any rigid and straightjacket formula as to when such request is to be granted and when rejected. It all depends on the factual matrix of any given case and, therefore, such request has to be understood after properly appreciating the facts, particularly when the trial is already over and the proposed amendment is based on the facts which were already within the knowledge of any such applicant, even before the issues were framed.

23. After careful perusal of the matter, I am of the opinion that there is no illegality or perversity in the order which may necessitate interference of any kind. It also cannot be said that there would be any serious prejudice to plaintiff, if amendment is not permitted.

24. Prime grievance is with respect to the fact that the plot in question was jointly owned and the said two brothers were joint owners and,



therefore, the other brother could not have sold the same.

25. Issues were framed on 30.07.2010, much after the dismissal of said SLP and, apparently, it is too late to seek amendment. Moreover, even as per plaintiff, all the facts are already on record and the above orders, including the dismissal of SLP, are in the knowledge of the learned Trial Court and, these would be, for sure, considered by the court when hearing final arguments. Needless to say, the court can, if required, mould the relief appropriately, in a given case on existence of certain conditions, in case it returns any finding in favour of the plaintiff. The principle of moulding of relief has though evolved with the objective of doing substantial justice, nonetheless, at such a belated stage, this court shall not permit the clock to move backwards, particularly when plaintiff himself is found to be, least bothered.

26. Merely because, while dismissing said SLP, Hon'ble Supreme Court had clarified that such orders would not come in way of petitioner in his pending suit, plaintiff cannot seek to amend, as a matter of right. Moreover, if at all, he wanted some amendment, he should have sought for the same, immediately. As noted, issues were framed later and since trial herein, not only commenced but has also been concluded, the request of amendment lacks any merit. The court should, generally speaking, not come to rescue of a party who is in deep slumber.

27. The reasons recorded by learned Trial Court are well-merited and there is no reason to come to a different conclusion, more so when the ambit and scope of interference in supervisory jurisdiction is circumscribed. Moreover, evidently, the endeavour of the petitioner is to bring on record a different cause of action. He seeks nullity of those orders which have



already attained finality, *albeit*, the decision of the suit has to be while keeping in mind the specific observations given by Hon'ble Supreme Court in said SLP. However, such observation would not give any handle to plaintiff to also seek a decree of partition and thus, the proposed amendments in prayer, to a very large extent, amount to introduction of new cause of action. It can, thus, certainly prejudice his adversary, being highly belated.

28. As an upshot of the foregoing discussion, the petition stands dismissed. All pending applications also stand disposed of in aforesaid terms.

29. It is, however, clarified that the observations made in this order are, purely, in relation to assess whether amendment is to be allowed or not and since this Court has not even touched the evidence led by the parties, the learned Trial Court shall not feel prejudiced by any observation contained herein.

(MANOJ JAIN)
JUDGE

MARCH 19, 2025/st/SS