

**JUDGEMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Civil Revision No.167/2015**  
**Dilshad Ahmed Khan Vs Niaz Ahmad Zahid etc.**

**Petitioner by:                      Mr. Shams Iqbal, Advocate.**

**Respondents:                      Ch. Tasneem Bari Salimi, Advocate.**

**Date of hearing:                      21.12.2016.**

**AAMER FAROOQ, J.-**                      Through the instant petition, the Petitioner has assailed order dated 24.1.2015, passed by Civil Judge 1st Class-West, Islamabad, whereby the application under Order 6 Rule 17 CPC, for amendment in the plaint, was dismissed.

**2.**                      The facts, in brief, are that Petitioner filed a suit for declaration, permanent and mandatory injunction on 19.4.2011. The suit of the petitioner was based on the General Power of Attorney and agreement to sell executed in his favour on 29.10.2010 by respondent No.1. The declaration was sought that the Petitioner is owner of the property in question and that respondent No.2 has not cancelled the power of attorney in favour of the petitioner. Respondent No.1 also filed a suit for declaration and cancellation of power of attorney dated 29.10.2010 as well as sale agreement dated 24.1.2011, wherein respondent No.1 admitted that he has received entire sale consideration. Both the suits were consolidated by the trial court. Since power of attorney was cancelled during the pendency of the suit ,therefore, the petitioner filed an application for amendment in plaint by seeking cancellation of order dated 18.4.2011 of respondent No.2 and for specific performance of sale agreement dated 24.1.2011. The said application of the petitioner was dismissed vide the impugned order.

**3.**                      Learned counsel for the Petitioner, interalia, submitted that in the suit for declaration if amendment is sought for adding the relief

for specific performance that does not change the nature of the suit and cause of action, therefore, trial court erred in dismissing the application filed by the petitioner. It was also contended that jurisdiction has been exercised by the trial court with material irregularity inasmuch as it failed to take into consideration the law on the subject. In support of his contentions learned counsel placed reliance on case titled Mst.Ghulam Bibi etc Vs Sarsa Khan etc (PLD 1985 SC 345), Niamatullah Khan etc Vs Addl.District Judge Bannu etc (1994 MLD 2332) and Javaid Iqbal Vs Abdul Aziz etc (PLD 2006 SC 66).

4. The learned counsel for respondent No.1 defended the judgment and contended that proceedings before the trial court are ripe for final arguments, therefore, at this stage amendment cannot be allowed. It was also submitted that the amendment would change the nature of suit, hence was rightly disallowed.

5. The seminal judgement on the law pertaining to amendment in pleadings is Mst.Ghulam Bibi etc Vs Sarsa Khan etc (PLD 1985 SC 345) wherein the Honourable Supreme Court of Pakistan laid down the following principles with respect to the amendment in pleadings:-

*Language used in rule 17 of Order VI CPC to the effect that all such amendments shall be made as may be necessary for the purpose of determining the real questions is controversy is mandatory in nature, therefore, once the court decides that the amendment is necessary for the said purpose of determining the real question, the court is required by law to not only to allow an application made by a party in that behalf but is also bound to direct the amendment for the said purpose. Thus the rule can be divided into two parts. In the cases falling under the first part, the court has the discretion to allow or not to allow the amendment, but under the second part once the court comes to a finding*

*that the amendment is necessary for the purpose of determining the real question, it becomes the duty of the court to permit the amendment. What has been stated above is, however, subject to a very important condition that the nature of the suit in so far as its cause of action is concerned is not changed by the amendment whether it falls under the first part of rule 17 or in the second part, because when the cause of action is changed the suit would become different from the one initially filed.*

*In the light of the foregoing discussion if the cause of action does not change the main substance of the suit and nature of the suit would not change and if that does not change the question of limitation would then remain only of form and not of substance. That is why this court, has so far followed the liberal rule in interpreting Order VI, rule 27 so as to permit amendment if otherwise necessary notwithstanding the possibility that on account of some formal change, the question of limitation might have acquired pronounced importance, had it not been a case of amendment under Order VI, rule 17. Other principles governing the question of amendment in pleadings have adequately been determined and examined in the precedent law and no more discussion is necessary in so far as the question of law and principle is concerned.*

**6.** The petitioner in the instant case filed a suit for declaration to the effect that he is bonafide purchaser and in possession of the suit property i.e plot No.34-A, G-9 Markaz, Islamabad and mandatory injunction directing the defendants not to transfer the property as well as permanent injunction. The cause of action of the petitioner is based on agreement to sell dated 24.1.2011 as well as the General Power of attorney dated 29.10.2010. During the pendency of the suit of the petitioner a suit was also filed by respondent No.1 seeking cancellation of General Power of Attorney and declaration to the effect that he is

the lawful owner of the property in question. The Petitioner in light of the said facts i.e filing of suit by respondent No.1 moved an application under Order 6 Rule 17 CPC for amendment in pleadings which was dismissed by the trial court vide the impugned order primarily on the ground that same would change the nature and substance of the suit.

**7.** As submitted above the cause of action or the basis for the suit of the petitioner is agreement dated 24.1.2011 and General Power of Attorney dated 29.10.2010. The sole question before this court is whether in the suit for declaration a relief regarding the specific performance could be agitated and whether same will change the complexion of the suit. In similar circumstances the Honourable Supreme Court of Pakistan in case titled Mst.Zubaida Bibi Vs Mst.Hashmat Bibi etc (1993 SCMR 1882) held that where in a suit for declaration appellant seeks new relief by way of specific performance of agreement to sell and the said new relief is entirely based on the assertions already made in the plaint this would not change the nature of the suit. Similarly the Honourable Lahore High Court in case titled Muhammad Ismail etc Vs Roshan Ara Begum etc (PLD 2001 Lahore 28) held that where by amendment plaintiff wanted to seek the relief of specific performance on the basis of the pleadings already on record such amendment would neither change the nature nor complexion of the suit nor the same constitutes substitution of the cause of action. Similar view was taken in case titled Ali Asghar Shah Vs Hashim Shah etc (1996 CLC 1252) as well as Niamatullah Khan etc Vs Addl.District Judge Bannu etc (1994 MLD 2332).

**8.** In view of the above case law as well as facts and circumstances of the case the amendment sought in the plaint by the petitioner by way of seeking relief of specific performance of agreement to sell dated 24.1.2016 and regarding the declaration vis-

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agreement to sell dated 24.1.2016 and regarding the declaration vis-a-vis the cancellation of General Power of Attorney does not change the nature or complexion of the suit or introduces a new cause of action.

9. For the foregoing reasons the instant Civil Revision is allowed and the impugned order dated 24.1.2015 is set-aside; consequently, the application for amendment in the plaint filed by the petitioner is accepted subject to payment of cost of Rs.10,000/- to the respondent No.1 as cost for the amendment. The respondents shall be entitled to file amended written statement.

(AMER FAROOQ)  
JUDGE

M.S.ZAKI

Approved For Reporting.