

Delhi High Court

Smt. Devki Gupta vs Shri Prakash Chand Gupta on 20 September, 2005

Author: A Kumar

Bench: A Kumar

JUDGMENT Anil Kumar, J.

1. The defendant has filed this application under Order VI Rule 17 read with Section 151 of Code of Civil Procedure for amendment of the written statement by substituting para 3 of the written statement by giving more circumstances about relinquishment deed dated 29th May, 1986 that it is not binding upon the defendant.

2. The application for amendment is filed in a suit for injunction filed by Smt. Devki Gupta, Plaintiff, mother of Shri Prakash Chand Gupta, defendant seeking a restraint against her son from occupying or in dealing with the first floor of the property bearing No. B-78, Gulmohar Park, New Delhi and from creating any act of nuisance in the form of creating obstruction or hindrance in any way of plaintiff to deal with the property or to create obstruction in the way of inspecting or occupying the property in question or enjoyment thereof by the tenant or with respect to any matter connected or ancillary thereto.

3. Refuting the allegations made by the plaintiff in the plaint, the defendant had pleaded that relinquishment deed dated 29th May, 1986 was executed only to empower the plaintiff to get the mutation of the property without any difficulty, however, by the said relinquishment deed, the defendant did not give up his inherent and lawful right of his one/fifth share in the ancestral property, his father having died intestate on 6th January, 1986.

4. The suit is still at the initial stages as the parties have not filed all the documents and admission/denial of the documents has not been carried out nor the issues have been framed. Now, by the above noted application, the defendant seeks to incorporate the pleas regarding the relinquishment deed being not binding on him as it was executed only to empower the plaintiff to get the mutation of the property without any difficulty. The defendant has contended that he was under severe shock and was a case of total nervous breakdown on account of death of his father and husband of the plaintiff. The defendant has given the details of the hospital where he was taken and another hospital where he was shifted and the hospital where he continued to get the treatment. He intends to plead by amendment that on account of conspiracy of Shri Ramesh Chand and his wife, Smt. Bina, the relinquishment deed was got executed from him on the representation that this will facilitate mutation of the property with the DDA and Municipal corporation of Delhi and he has given various other circumstances under which the relinquishment deed was executed by him and why the relinquishment deed cannot be acted upon on various grounds. The defendant also contends that instead other mother, some other woman was produced before the sub-Registrar as the plaintiff was in Agra during the relevant period and was a retired teacher.

5. The defendant contended that the proposed amendment is only clarificatory and does not set up a new case nor the elaborated facts which he wants to incorporate tantamount to withdrawal of any admissions. The defendant has relied on , B.K.N. Pillai v. P. Pillai; , Estralla Rubber v. Dass Estate

Pvt. Ltd.; , Akshaya Restaurant v. P. Anjanappa and Ors.; , Lt. Col. Gaj Singh Yadav v. Satish Chander Yadav and , Kanwal Kishore Manchanda v. Ms. Raksha Arora and Ors.

6. The plaintiff/non-applicant, per contra, has contended that the amendment cannot be allowed as in para 3 of the written statement, replying to para 7 of the plaint, the defendant relied upon the contents of the relinquishment deed dated 29th May, 1986. According to plaintiff, the amendment cannot be allowed as by the proposed amendment, the defendant is also trying to propound a separate relinquishment deed dated 19th December, 1986 alleged to be fabricated on behalf of mother of deceased Ishwar Chand Gupta. The plaintiff non-applicant also relies on , Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram and Co. in which case the amendment was not allowed as the effect of the amendment sought was to deprive the plaintiff of a valuable right already accrued to him and the defendant was not allowed to set up a new case.

7. Before dealing with the contention of the parties, it will be relevant to point out that a separate suit for partition is also pending between the parties. The suit for partition is filed by Smt. Usha Gupta, daughter of the plaintiff against her and the sons of late Shri Ishwar Chand Gupta including the present defendant. Relinquishment deed is also challenged in the said suit by the present defendant.

8. I have heard the learned counsel for the parties and perused the averments made in the application and the reply. In order to ascertain whether the amendment should be allowed or not, the primary requisite is whether it is necessary for determination of real controversies between the parties. The suit of the plaintiff is for injunction in respect of property which has devolved upon the plaintiff after the demise of her husband and in which she is claiming absolute rights on account of the relinquishment deed executed by the defendant and other legal heirs of late Shri Ishwar Chand Gupta. The defendant in the written statement has averred that the said relinquishment deed was executed by him only to empower the plaintiff to get the mutation of the property without any difficulty but he never gave up his inherent and lawful right of his one/fifth share in the property. By the proposed amendment, defendant wants to give various other factors in support of his plea that the relinquishment deed dated 2th May, 1986 does not deprive him of his one/fifth share in the property.

9. This is no more res integra that the purpose and object of amendment is to allow parties to alter or amend their pleadings at any stage of proceedings in order to have an effectual determination of the disputes between the parties on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down in various precedents. It is also true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayer should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation. Pretrial amendments are allowed more liberally than those which are sought to be made after the commencement of trial or after conclusion thereof. Mere delay usually cannot be a ground for

refusing a prayer for amendment because merits of amendment sought to be incorporated by way of amendments are not to be judged at the stage of allowing prayer for amendment. Courts do not adopt hyper technical approach and a liberal approach is a general rule especially if the either party can be compensated with cost. The defendant/applicant is challenging the relinquishment deed and consequently in that context he has relied on the same in para 3 of the written statement replying to para 7 of the plaint, but that does not tantamount to any admission in respect of the said relinquishment deed as has been contended by the learned counsel for the plaintiff, Mr. Ashok Gurnani. Reading para 3 of the written statement, in entirety, which is proposed to be amended, it cannot be inferred that the defendant/applicant has made such admission in respect to relinquishment deed which will dis-entitle him to claim his rights in the property despite the said relinquishment deed. Considering the entire para 3 of the written statement it can not be denied that the defendant has relied on the relinquishment deed but at the same time has claimed rights in the property despite execution of it. Considering the entire proposed amendments, it is apparent that it is to elaborate the defense already set up by the defendant and no new plea has been taken but what is being stated are more facts in support of the plea that relinquishment deed does not take away the rights of the defendant in the suit property. Looking at the proposed amendment sought by the defendant No. 1, it is apparent that it will not be just irrelevant in the facts and circumstances or not necessary for the determination of controversies between the parties.

10. The submission of the learned counsel for plaintiff that by propounding another relinquishment deed dated 19th December, 1986 allegedly of the mother of the deceased Ishwar Chand Gupta, the defendant is trying to propound a new case, is also not correct as the said fact is averred by the defendant in furtherance of his pleas that the relinquishment deed dated 29th May, 1986 has also been got executed from him by mis-representation. Consequently, taking the facts in entirety, it does not tantamount to substitution of the original plea of the defendant with any other new plea and the proposed amendment is only clarificatory in nature and does not result into withdrawal of any admission by the defendant.

11. In B.K. Pillai (supra), it was held that the application for amendment should not be rejected, especially when the party opposing amendment can be compensated by cost and the application does not suffer from any delay. Similarly, in M/s. Estralla Rubber (supra), the apex Court held that it is open for the defendant to take an alternative or additional defense and merely because there was delay in making an amendment application will not cause any prejudice or shall take away any right accrued and in such circumstances the amendment should not be rejected. The case of Akshaya Restaurant (supra) relied on by the defendant applicant is not relevant as the matter pertained to amendment of plaint and the application for amendment was dismissed by the apex Court.

12. A single Judge of this Court in Kanwal Kishore (supra) had held that the object of allowing the amendment in the averments of the parties is to iron out and solve the tangle and not to complicate them or to leave certain points for decision in future litigation and the endeavor of the court should always be to settle the matter by taking into consideration all the facts, especially in the matters pertaining to partition between the brothers and sisters. In Lt. Col. Gaj Singh Yadav (supra), these principles for amendment of the written statement were noted and it was held that those

amendment which do not constitute addition of a new cause of action or raises different case but amounts merely to a different or additional approach to the same facts should be allowed which amendments are necessary for determination of real controversies between the parties and are just for decision of the matter.

13. The reliance on Mr. Ashok Gurnani, learned counsel for the plaintiff, on the Modi Spinning and Weaving Mills Co. Ltd. (supra) does not advance the proposition set up by him against dismissal of the application of defendant/applicant as in that case amendment to the written statement was disallowed as the proposed amendment in that case entailed depriving the plaintiff of a valuable right accrued on account of admission already made by the defendant in the written statement. However, in the present case, the defendant has contended, from the beginning, that the relinquishment deed dated 29th May, 1986 was executed only to empower the plaintiff to get the mutation done without affecting his one/fifth share in the property in any manner and the proposed amendments are the details as to in what circumstances, the said relinquishment deed was got executed from him and the fraud played upon him.

14. Considering all the facts and in totality of circumstances and for the reasons stated hereinbefore, I am of the opinion, that the amendment sought by the defendant shall be relevant for determination of controversies between the parties and considering that issues have not been framed in the matter nor the proposed amendment tantamount to withdrawal of any admission made by the defendant and the plaintiff can be compensated, the amendment should be allowed to the defendant in terms of prayer made in the application.

15. The application of the defendant under Order VI Rule 17 read with Section 151 of Code of Civil Procedure is, therefore allowed, subject to payment of a cost of Rs. 5,000/- to the plaintiff.