

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

Date of Reserve: 15th February, 2010
Date of Order: 22nd February, 2010

CM (M) No. 946/2009

%

22.2.2010

Nazir Hussain

... Petitioner

Through: Mr. Kundan Kumar Mishra & Mr. D.K. Verma,
Advocates.

Versus

Neeta Goel & Ors.

... Respondents

Through: Mr. S.K. Mittal, Advocate for R-1.
Mr. Ajay Arora & Mr. Kapil Dutta, Advocates
for MCD.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition the petitioner has assailed an order dated 19th March, 2009 of the trial Court passed on an application under Order 6 Rule 17 CPC seeking amendment of the plaint. The petitioner is a neighborer residing in property no. 3651, Pahari Dheeraj, Delhi. He filed a suit for permanent injunction in respect of unauthorized construction being made in the adjoining property against the respondents and gave the number of adjoining property as 3645 Pahari Dheeraj. He also filed a site plan of the adjoining property. By application under Order 6 Rule 17 CPC the petitioner wanted to make amendment in the plaint in respect of the correct identification of the property and stated that the correct number of the property was 3645-3648 Pahari Dheeraj and not 3645 only and he should be allowed to rectify this number and place on record a rectified site plan. The learned trial Court disallowed the application of the petitioner on the ground that the petitioner had originally filed suit in respect of the property no. 3645 and now he wanted to incorporate property no. 3645-48 under the garb of proposed amendment. The learned trial Court also observed that on the one hand petitioner was claiming to be residing in vicinity of 3645 and on the other hand he was claiming that he was under wrong impression regarding the number of property number. Since the plaintiff was also seeking to file fresh site plan on record that would show that the plaintiff was changing subject

matter of the suit and wanted to include some other properties in the pending suit regarding unauthorized construction in one property. This kind of amendment cannot be allowed and in case the petitioner was aggrieved by unauthorized construction in other properties he was at liberty to file fresh suit against the other properties.

2. The order is assailed on the ground that trial Court did not even look into the site plan filed along with application and passed order contrary to prayer and facts. It is submitted that the petitioner had only corrected the property number and the site plan had no other variation.

3. The petition is opposed by the Counsel for the respondent on the ground that the petitioner wanted to convert a specific suit into a PIL and wanted to enlarge the scope of his earlier suit and this kind of amendment was not permissible. The respondent also assailed the *locus standi* of the petitioner in filing a suit before the trial Court.

4. The trial Court seems to be unaware of manner of numbering given in Old Delhi areas. In most of the Old Delhi areas a cluster of number is given to the properties and the properties are referred by this cluster of numbers. The amended site plan which the petitioner placed on record of the trial Court would have made it clear to the trial Court that the petitioner had not changed the site plan but he only mentioned the amended number of the properties on the top, remaining site plan was as it was. It is also not the case that the petitioner had moved an application under Order 6 Rule 17 CPC at belated stage. The petitioner had a right to rectify the plaint if the property number was inadvertently or due to lack of knowledge not correctly stated. The amendment was not going to affect the respondent in any manner or to cause any prejudice to the respondent in any manner. The only prayer of the petitioner was that no unauthorized construction should have been allowed. This is the right of every citizen to see that building bye-laws and laws are followed and unauthorized constructions are not carried in the neighborhood. Unauthorized construction creates civic problems for the entire neighborhood and affects material rights of the neighbors. Neighbors have a right to approach the Court against unauthorized construction, I therefore do not think that there was any flaw in *locus standi* of the petitioner in filing the suit. Neither the amendment being sought by the petitioner was in respect of any other property except the property about which the petitioner had already approached the Court. The petitioner only wanted to rectify the plaint so as to give correct numbers of the property, the site plan remained the same.

5. The trial Court wrongly disallowed the application of the petitioner. It must be remembered that one of the purposes of amendment application is to prevent multifarious litigations. It was not advisable for the petitioner to file another suit in respect of same premises giving different numbers and the petitioner correctly approached the Court with amendment application. The petition is allowed. The order dated 19th March, 2009 of the trial Court is set aside. The amendment application of the petitioner stands allowed.

Copy of this order be sent to the lower Court.

February 22, 2010
vn

SHIV NARAYAN DHINGRA, J.