SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

Ch.Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil Appeal No. 189 of 2016
(PLA filed on 26.09.2016)

Sajid Hussain son of Khadim Hussain, r/o House No.469, Sector F/3 Part II, Tehsil and District Mirpur.

…. APPELLANT

VERSUS

1. Maroof Hussain son of Muhammad Rasib, r/o Sangot Dhoke Rachayal, Tehsil and District Mirpur.
2. Municipal Corporation Mirpur through Administrator Municipal Corporation, Mirpur.
3. Administrator Municipal Corporation, Mirpur.
4. Estate Officer Municipal Corporation, Mirpur.

….RESPONDENTS

(On appeal from the judgment of the High Court dated 26.05.2016 in revision petition No. 32 of 2015)

FOR THE APPELLANT: Mr.Kamran Tariq, Advocate.

FOR THE RESPONDENTS: Mr.M.Siddique Ch., Advocate.

Date of hearing: 22.12.2016

JUDGMENT:

***Raja Saeed Akram Khan, J.*—** This appeal by leave of the Court has been directed against the judgment of the High Court dated 26.05.2016, whereby the revision petition filed by respondent No.1, herein, has been accepted.

2. The facts necessary for disposal of this appeal are that respondent No.1, herein, filed a suit for specific performance of the contract and perpetual injunction in the Court of District Judge, Mirpur. It was averred in the

plaint that the plaintiff purchased plots No.204-C and 204-D, situate at sub-secttor C/3, Mirpur from defendant-appellant, herein, in lieu of Rs.60,00,000/- vide agreement-to-sell dated 21.12.2012. It was claimed that consideration amount was paid to defendant No.1, and the possession of the plots was also delivered to the plaintiff. It was further averred that the plaintiff is in possession of the plots and now the defendant has refused to execute the sale-deed as was agreed between the parties. During pendency of the suit, an application for amendment in the plaint was moved by the plaintiff, stating therein, that defendant No.1, forcibly taken the possession from the tenant, therefore, plaintiff besides other, wants to include relief of possession. The trial Court after necessary proceedings rejected the application. The plaintiff-respondent No.1, herein, filed revision petition

before the High Court. The learned High Court through impugned judgment dated 26.05.2016, while accepting the revision petition allowed the application for amendment. Hence, this appeal by leave of the Court.

3. Mr. Kamran Tariq, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that the learned High Court while allowing the application for amendment in the plaint has not adhered to the relevant provisions of law. He added that in the application, the plaintiff has taken the stance that he has been dispossessed from the suit land during pendency of the suit, whereas, the possession of the suit land was never transferred to him by the appellant. In this way, the application was filed with malafide

intention just to linger on the matter. He added that the plaintiff neither paid the consideration amount to the appellant nor the appellant handed over the possession to him. He further added that the general power of attorney upon which respondent No.1, herein, has heavily relied has been cancelled, but this aspect of the case escaped the notice of the High Court. He contended that the learned High Court erred in law while not taking into account that the proposed amendment will change the whole complexion of the suit which is not permissible under law. He lastly submitted that the learned High Court disturbed the well reasoned order passed by the District Judge without assigning any cogent reason; therefore, the impugned judgment is liable to be set aside. He relied upon the cases reported as *Ghulam Qadir and 3 others v. Satar Din and 28 others* [2013 SCR

1218], *Mst. Zohra Bibi and 3 others v. Ashiq Hussain and 2 others* [2015 SCR 1552] and *Abdul Rashid & another v. Munir Akhtar* [2016 SCR 128].

4. On the other hand, Mr. Muhammad Siddique Chaudhary, Advocate, the learned counsel for respondent No.1, strongly opposed the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that the order passed by the learned District Judge was based on misinterpretation of law; therefore, the learned High Court was fully justified to set aside the same while exercising the revisional jurisdiction. He added that the amendment sought by respondent No.1 is very much necessary for proper adjudication of the case and such like amendment can be allowed at

any stage even before the Supreme Court. He further contended that admittedly the possession of the plot was snatched by the appellant during the pendency of the suit and to that extent the relief of possession sought by the plaintiff will not change the complexion of the suit.

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. The controversy involved in the matter in hand relates to the amendment in the plaint. Thus, we deem it proper to reproduce here the relevant provision of law which deals with the amendment, i.e. Order VI, Rule 17, CPC:

> "17. Amendment of pleadings.--- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may

> be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

The bare reading of the above referred statutory provision shows that such amendment which may necessary to resolve the real controversy involved in the matter can be allowed at any stage of the proceedings. To resolve the controversy, we have examined the contents of the plaint as well as the application filed for amendment. For better appreciation the relevant portions of the plaint and the application for amendment are reproduced here. Paragraph Nos. 1 and 3 of the plaint read as under:-

> "1۔ یہ کہ مظہر مدعی نے پلاٹ نمبر 204-C پلاٹ نمبر 204-D تعدادی بالترتیب 226.39م گ، 70/2+75x30واقع سب سیکٹر C/3 میرپور ازاں مدعا علیہ نمبر 1 بلعوض ساٹھ لاکھ روپے میں بروئے اقرار نامہ مصدرہ محررہ 21.12.12 خرید کیااور سالم رقم ادا کی اور موقع پر قبضہ حاصل کیا اصل مختار نامہ واقرار نامہ و منتقل آرڈر لف ھذا ہے۔

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"3۔ یہ کہ مظہر مدعی پلاٹ ھاء متدعویہ پر تاریخ خرید سے قابض ہے اور پلاٹ ھائ متدعویہ پر ڈبل سٹوری مکانات تعمیر شدہ ہیں۔ جو کہ مظہر مدعی نے کرایہ پر دے رکھے ہیں اور کرایہ خود مدعی وصول کرتا ہے۔ کرایہ نامہ لف ہذا ہے۔"

Paragraph No.2 of the application for amendment reads as under:-

"یہ کہ دوران سماعت دعویٰ مورخہ 2014۔08۔05 کو مدعا علیہ نمبر 1 نے کرایہ داران سائل/مدعی کو زبردستی سینہ زوری سے پلاٹ ھاء متدعویہ پر بنے ہوئے مکانات سے بیدخل کر کے قبضہ کر لیا ہے اسلئے ترمیم دعویٰ ناگزیر ہو چکی ہے۔"

After going through the contents of the plaint it spells out that the plaintiff has taken the stance that he purchased the suit land through agreement-to-sell dated 21.12.2012 and the possession of the land was handed over to him at the relevant time; whereas, the contents of the application shows that during the pendency of the suit the defendant-appellant-herein, snatched the possession of the suit land from the plaintiff-respondent No.1. It may be observed here that it is settled principle of law that amendment in the pleadings can be

allowed at any stage and the same can only be refused when through proposed amendment the nature of the suit may be changed or the amendment creates new cause of action. It is also now settled that if the Court comes to the conclusion that without allowing amendment the just decision in the case can be made the amendment can be disallowed. However, in the instant case, in our estimation, mere inclusion of the relief of possession which pertains to the same land neither changes the character of the suit nor creates new cause of action rather keeping in view the circumstances of the case it can be said that the same is relevant for proper adjudication of the matter. Reliance may be placed on a case reported as *Mst. Anwar Begum and another v. Mazhar Hussain and another* [PLJ 2000 SC (AJ&K) 237], wherein, this Court held as under:-

"It may be observed that the plaintiffs-appellants want to annul the gift-deed in question on the grounds that the same was in excess of the share of the donor and was not accompanied by the delivery of possession. Now they seek the amendment in terms that they have been deprived of the possession during the pendency of the suits. Irrespective of the fact whether they were deprived of the possession during the pendency of the suits or not, the fact remains that the conversion of declaratory suits to suits for possession would not change the nature of the suit in substance; basically, the plaintiffs-appellants intend to annul the gift-deed any by amendment they seek an additional relief of possession; similarly, the amendment cannot be disallowed merely because that is being sought after the expiry of period of four years."

Similarly, in a case reported as *Muhammad Akram and 2 others v. Muhammad Ashraf and 5 others* [1997 SCR 315], this Court while dealing with the proposition has held that:-

> "We are of the view that if the cause of action of the suit remains unchanged, then it cannot be said that the complexion of suit would become different. The 'complexion' and 'nature' of the suit would be different where the cause of action is changed. The mere fact that a different or additional relief is prayed for on the basis of the same cause of action as in the former suit, it cannot be said that the complexion of the suit would be changed. We are supported by a case reported as *Mst. Ghulam Bibi v. Sarsa Khan* [PLD 1985 SC 345]. The facts of the said case were that a declaratory suit seeking the declaration of ownership was filed on the basis of an unregistered exchange deed. The plaintiffs were

> non-suited on the ground that title in the property was not transferred, as the exchange deed was not registered. It was observed that the plaintiffs should have filed a suit for the specific performance of the agreement instead of seeking a declaration of title on the basis of exchange deed. Subsequently, at the appellate stage, the plaintiffs filed an application for an amendment of the suit for conve4rting their suit into one for the specific performance of the agreement. After considering various points including that of delay, the change of complexion of suit and cause of action, it was held that mere different relief on the basis of same cause of action would not change the character of the suit. Hence the amendment was allowed."

After examining the record we are convinced that the learned High Court while applying the

correct law allowed the application for amendment and has not committed any illegality; therefore, we fully endorse the findings recorded by the High Court. The law referred to by the learned counsel for the appellant having distinguished facts and circumstances is not applicable in the case in hand.

In view of the above, findings no force this appeal stands dismissed. No order as to costs.

Mirpur, **JUDGE** **JUDGE**
__.01.2017