

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

Date of Reserve: January 14, 2010

Date of Order: February 02, 2010

**+ CM(M) 67/2008**

%

**02.02.2010**

**Chander Bati**

**...Petitioner**

Through: Mr. Sukhbir Singh and Mr. Nishant Singh, Advocates

Versus

**Om Prakash & Ors.**

**...Respondents**

Through: nemo

**JUSTICE SHIV NARAYAN DHINGRA**

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

**JUDGMENT**

1. By this petition the petitioner has assailed an order dated 13<sup>th</sup> November 2007 whereby an application of the petitioner under Order 6 Rule 17 CPC seeking leave to amend the plaint was partly allowed and partly rejected.

2. The petitioner herein had sought to amend the paragraphs 11, 12 and 13 of the plaint and had also sought to add additional prayer (e) and (f). The plea taken by the petitioner for seeking amendment was that after filing of the suit when defendants filed written statement, the petitioner herein learnt about another decree dated 2<sup>nd</sup> May, 1986 passed in Suit No.248 of 1984 titled as *Nihal Chand* versus *Bhoop Singh*. After perusal of the judgment in this case, the petitioner came to conclusion that respondent no.1 to 7, 15 and deceased Smt. Kamla Devi had connived with each other and conspired against the petitioner and another daughter of Shri Bhoop Singh and the aforesaid decree was obtained without impleading the petitioner and other daughters of late Shri Bhoop Singh as party to the suit no.248 of 1984. Thus, the petitioner wanted to make amendment in the plaint that the

judgment and decree dated 2<sup>nd</sup> May, 1986 was not binding upon the petitioner since the petitioner was not a party to that suit and the decree in that suit was obtained by the respondents in connivance with each other to cause wrongful loss. The petitioner also wanted to make consequential amendments in the plaint alleging that defendant no.1 had no right and title to execute the documents after a decree was passed by the Court in suit no.248 of 1984 and the petitioner wanted amendment in paragraph 12 of the plaint in order to plead that the sale in favour of defendant no.2 by defendant no.1 of the adjacent shop was also null and void. In paragraph 13 of the plaint, the petitioner wanted to bring on record that defendant no.13 had been wrongly and illegally shown at serial number 4 as Lr of deceased Bhoop Singh in Suit 248 of 1984. Defendant no.13 was also liable to be prosecuted with other defendants for wrongful mentioning the father's name as Bhoop Singh. In prayer clause, the petitioner wanted a declaration that documents executed in favour of defendants no.8, 12 and 13 were null and void and were not legally enforceable and a declaration that the judgment and order dated 2<sup>nd</sup> May, 1986 in Suit no. 248 of 1984 was null and void and not binding upon him and he wanted a declaratory relief that the sale of the suit property in favour of Shri Sunder Lal was null and void.

3. The learned trial court after considering the arguments came to conclusion that since the petitioner claimed that he had come to know of passing of decree dated 2<sup>nd</sup> May, 1984 recently, and petitioner has a separate cause of action for the decree to be declared null and void. The amendment of the suit was not the remedy available to the petitioner. He therefore did not allow the amendment regarding declaring the decree as null and void and declaration of sale in favour of respondent no.12 as null and void. However, he allowed the amendment in paragraph 12 since the petitioner had already taken the stand in respect of these pleadings in the plaint and paragraph 12 was merely an explanatory paragraph. The trial court also observed that the suit number 248 of 1984 was not between the same parties and the decree and judgment of that case could not be declared as null and void without

making all the parties to that suit as parties to the present suit and this would complicate the present case and it was also not necessary for adjudication the lis between the parties.

4. It is settled law that a certified copy of a judgment passed by a competent court can be taken on record without a formal proof. The petitioner can argue at final stage whether the judgment was binding on her or not. The judgment of a Civil Court in respect to property dispute between the parties is not a judgment in rem and does not decide rights in respect of world at large. The judgment is always effective between the parties to the judgment. For considering the applicability of the judgment there was no necessity of seeking an amendment of pleadings. If the petitioner wanted to get the judgment to be declared as null and void, the petitioner has to file a separate suit. The learned trial court, therefore, rightly rejected the plea of the petitioner of allowing amendment regarding declaration of the judgment and decree as null and void. Similarly, petitioner's seeking amendment of the plaint for declaring the sale deed made in favour of defendant no.12 as null and void was also a separate cause of action and the petitioner was at liberty to pursue this cause of action separately.

5. In view of foregoing facts, I consider that the learned trial court has not acted without jurisdiction. I find no ground to interfere the impugned order. The petition is hereby dismissed with no orders as to costs.

**February 02, 2010**  
**rd**

**SHIV NARAYAN DHINGRA J.**