
(2005) 10 UK CK 0024
In the Uttarakhand High Court
Case No : Writ Petition No. 572 of 2005

Ali Hasan

APPELLANT

Vs

Deputy Director, Consolidation and Others

RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 9A(2)

Citation : (2005) 10 UK CK 0024

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sharad Sharma, for the Appellant; Ramji Srivastava, for Respondents Nos. 3 to 8 and Kailash Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri Sharad Sharma, learned Counsel for the Petitioner, Sri Ramji Srivastava, learned Counsel for the Respondents No. 3 to 8 and Sri Kailash Tiwari, learned Standing Counsel for the Respondents No. 1 and 2.

2. By the present writ petition, the Petitioner has prayed for a writ of certiorari quashing, the order dated 27-01-2004 passed by the Respondent No. 2 as well as the order-dated 12-05-2005 passed by the Respondent No. 1.

3. Briefly stated, the proceedings were initiated by the Petitioner by filing an objection u/s 9(A)(2), filed before the Respondent No. 2 on 10-02-1997 for declaration of his rights as "Sankramaniya Bhumidhar" in relation to Gata numbers detailed here in below lying in Khata No. 84:

Khata No. 84 Gata No. 11/1 area 0-120

Khata No. 84 Gata No. 11/2 area 0-199

Khata No. 84 Gata No. 11/3 area 0-400

Khata No. 84 Gata No. 11/4 area 0-690

Khata No. 84 Gata No. 19 M area 0-154

Khata No. 84 Gata No. 23 M area 0-980

Khata No. 84 Gata No. 24 M area 0-164

Khata No. 84 Gata No. 25 M area 0-082

Khata No. 84 Gata No. 76 area 0-470

4. The Consolidation Officer vide his order dated 26th September, 2001 has rejected the objections of the Petitioner.

5. Aggrieved by the said order, the Petitioner preferred an appeal under Sub-section (1) of Section 11 before the Settlement Officer Consolidation. The Settlement Officer Consolidation vide his judgment dated 15-03-2003 allowed the appeal. The Settlement Officer Consolidation has passed the order to the following effect:

???? | ??? 29 - 9 - 01 ??????, ?????? | ??? 21 - 3 - 2003 ?
| ??? |

???, ??? |

6. A perusal of the order shows that the Settlement Officer Consolidation has left it open to the parties to prove by documentary as well as oral evidence regarding rights in the property. As a result of the remand order passed by the Settlement Officer Consolidation, the Petitioner has preferred an amendment application before the Consolidation Officer praying to the following effect:

1 .: 12 ? ? ? ? 1/2 ? |

2 .: 13 ? ? ? 11/1 ? 11/2 ? ? ? ? |

3 .: 16 ? ? "" |

7. The objections were also filed by the Respondents stating therein that the amendment application has been filed after much delay and it will change the nature of the proceedings, therefore, it is liable to be rejected.

8. The Consolidation Officer vide his order dated 27th January, 2004 rejected the application on the ground that it will change the nature of the proceedings and further since no amendment application was filed earlier, therefore, it cannot be allowed.

9. Petitioner aggrieved by the said order went in revision. The revisional court vide his order dated 12-05-2005 dismissed the revision thereby rejecting the amendment application.

10. Against the said order, present writ petition has been filed by the Petitioner.

11. A perusal of the original application shows to the following effect:

? 84 ? ? ? ? , ? ? - ? ? 1/2 ? ? |

: ? ? ? ? 84 ? ? , ? ? ? , ? , ? ? 1/2 ? ? ? ? 1/2 ? ? |

12. Present amendment application has been filed stating therein that the word "Sah Khatedar" may be deleted and in its place, the Petitioner may be permitted to add that he has become "Sankramniya Bhumidhar". In the notice, the prayer has been made only for deleting the word Sah Khatedar.

13. A perusal of the order passed by the Settlement Officer Consolidation shows that he has remanded the matter before the Consolidation Officer for considering afresh the rights and titles of the parties and he has also permitted both the parties to lead evidence documentary as well as oral. The order passed by the Settlement Officer Consolidation dated 15-03-2003 has become final and the same has not been challenged in view of the aforesaid remand order. It is now left for the parties to claim their rights and title afresh u/s 9-A(2) of the Consolidation of Holdings Act. The amendment, therefore, having been made by the Petitioner, cannot affect the rights of the parties and therefore, the right and title has to be decided in accordance with law.

14. It is well settled that by allowing the amendment, no party can get any right and only it is left to the court to decide the dispute in accordance with the pleadings of the parties in view of the law laid down by the Allahabad High Court in Mahesh Narain Shukla v. Ram Kishore 1979 (U.P.) R.C.C. 213. The relevant observations are quoted below:

It is also settled that while deciding an application for amendment, a court is not entitled to consider the truth or falsity of a statement through the amendment. If an amendment is false, the Plaintiff will fail in the suit. As such, the court below was wrong in examining the merits of the amendment and rejecting the same on that ground.

15. In the case of B.K.N. Pillai v. P. Pillai and Anr. 2000 (38) ALR S.C. 338, the Apex Court has observed as under:

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and 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 by various High Courts and this Court. It is 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 prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the 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.

16. The amendment has been refused only on the technical ground. The law

regarding amendment is very much clear as has been held in *Estralla Rubber v. Dass Estate* 2001 (3) CCC 663 (S.C.) after relying upon the judgment of B.K.N. Narayana Pillai Vs. P. Pillai and Another, . The apex court has observed as under:

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and 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 by various High Courts and this Court. It is 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 prayers 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 the 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.

17. In view of the above the amendment application deserves to be allowed in order to clear the pleadings of the parties after the remand of the matter. Since the case has to be tried afresh, no one shall be prejudiced as the entire claim is open to the parties. It is well settled that merely by allowing the amendment no rights are accrued to the parties. It is only by way of facilities to both the parties so that they may prove their respective cases accordingly.

18. In view of the aforesaid legal position, the writ petition is allowed. The matter is sent back to the Consolidation Officer for deciding afresh in the light of the observations made above. Liberty is given to the parties to lead evidence before the Consolidation Officer.

19. Writ petition is allowed. No order as to costs.