
(2014) 05 AHC CK 0151
In the Allahabad High Court
Case No : Writ-C No. 26029 of 2014

Amar Singh

APPELLANT

Vs

Yogender Singh

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

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

Citation : (2014) 124 RD 22

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Amitabh Agarwal, Advocate for the Appellant; Mahesh Narain Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Amitabh Agarwal for the petitioners. This writ petition has been filed against the orders of Sub-Divisional Officer dated 1.7.2013, rejecting the amendment application dated 1.6.2013, filed by the petitioners for amendment of written statement in Suit No. 77 of 2011, u/s 176 of U.P. Act No. 1 of 1951 (hereinafter referred to as the Act) and Additional Commissioner dated 28.3.2014 dismissing the revision of the petitioners.

2. Yogendra Singh (respondent-1) filed a suit (registered as Suit No. 77 of 2011), u/s 176 of the Act, for partition of his share in plot No. 589 (area 0.1600 hectare) of village Bhatona, pargana Agauta, district Bulandshahar. The petitioners filed their written statement on 7.2.2013. Thereafter issues were framed and evidence of the plaintiff was completed on 9.5.2013. Then 18.5.2013 was fixed for the evidence of the defendants. The petitioners filed an application dated 1.6.2013, for amendment of written statement by adding paragraph-5-A to the effect that the land in dispute was not used for agricultural purposes and on the spot buildings are existing as such it is not "land" within the meaning of section 3 (14) of U.P. Act No. 1 of 1951 and the suit is not cognizable by Revenue Court and is barred u/s 331-A of U.P. Act No. 1 of 1951.

3. The amendment application was heard by Sub-Divisional Officer, who by order dated 1.7.2013, held that as the land in dispute was recorded as bhumidhari and no declaration u/s 143 of the Act, was made as such it cannot be treated as abadi. Trial of the suit has already been commenced as such amendment application cannot be entertained in view of Proviso to Order VI Rule 17 CPC as the nature of the land in dispute was well within the knowledge of the defendants on the date of filing written statement. The petitioners filed a revision (registered as Revision No. 139 of 2011-12) against the aforesaid order, which has been dismissed by Additional Collector by the order dated 28.3.2014. Hence, this writ petition has been filed.

4. The Counsel for the petitioners submits that the land in dispute is covered with building and is not used for agricultural purposes, as it is proved from khasra entries as such it is no more "land" as defined u/s 3(14) of the Act. The nature of the land in dispute has already been converted as abadi on the spot, it cannot be treated as "land" as no part of it is used for agricultural purposes, even in the absence of declaration u/s 143 of the Act, Revenue Court has no jurisdiction to partition the abadi and buildings as held by this Court in Panna Lal v. Chhabinath, 1992 RD 18 Mahendra Pratap Singh v. State of U.P., 2012 (115) RD 549 and Ajaz Carpets and Others Vs. Birla International Pvt. Ltd., Impugned orders are illegal and liable to be set aside.

5. I have considered the arguments of the Counsel for the parties and examined the record. Order VI Rule 17 C.P.C. provides the provision for amendment of the pleading, which is quoted below:--

17. Amendment of pleadings,--The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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 questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

6. Supreme Court in Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another, held that the first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this Rule is subject to proviso appended therein. The said Rule with proviso again substituted by Act 22 of 2002 with effect from 1.7.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings are able to satisfy the Court that in spite of due diligence they could not raise the issue before the commencement of trial and the Court is satisfied

with their explanation, amendment can be allowed even after commencement of the trial. To put it clear, Order VI Rule 17 CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pretrial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial.

7. Supreme Court in *Abdul Rehman and Another Vs. Mohd. Ruldu and Others*, held that it is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage.

8. In this case, the Courts below found that evidence of the plaintiff was closed. From the nature of the proposed amendments it was inferred that the defendants could not prove that in exercise of due diligence, the proposed amendments were not in their knowledge. Findings recorded in this respect do not suffer from any illegality.

9. So far as jurisdiction of Revenue Court to try the suit for partition, is concerned, section 176 of the Act, provides that a bhumidhar may sue for division of his holding. Vide Schedule II, Entry 16, the Court of Assistant Collector First Class has been conferred jurisdiction to try a suit of partition. The word "bhumidhar" has been defined u/s 130 of the Act; the person, who acquired bhumidhari right under the provisions of this Act, is bhumidhar. The word "holding" has not been defined under the Act but it has been defined u/s 3 (7) of U.P. Tenancy Act, 1939 as "holding means a parcel or parcels of land held under one lease, engagement or grant, or in the absence of such lease, engagement or grant under one tenure and in case of Thekedar includes the theka area".

10. The word "land" has been defined u/s 3 (14) of the Act as "Land, except in sections 109, 143 and 144 and Chapter VII means land held or occupied for the purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming".

11. The controversy as to whether the land which was land on the date of

vesting was used by bhumidhar for the purposes not connected with agriculture, horticulture or animal husbandry, pisciculture and poultry farming, as bhumidhar has right to use his holding for any purpose u/s 142 of the Act, will cease to be land came for consideration before Supreme Court in Shri Chandrika Singh and others Vs. Raja Vishwanath Pratap Singh and another, Supreme Court held as follows:

In order to exclude the applicability of the Act on the ground that the land is Abadi land it is necessary to determine whether the said land is or is not being used for purposes connected with agriculture, horticulture or animal husbandry. Such a determination is envisaged by sections 143 and 144 and where such a determination has not been made in accordance with those provisions and this question arises before a Court in a suit, it is required to be determined in accordance with the provisions of section 331-A. The scheme of the provisions contained in section 143, section 144 and section 331-A is that the question whether a particular land is or is not used for the purposes connected with agriculture, horticulture or animal husbandry has to be determined either u/s 143 or section 144 and where no such determination has been made, it should be determined by following the procedure laid down in section 331-A. It is not open to a Court dealing with a suit in which the said question arises to bypass the provisions of section 331-A and to proceed to determine the said question itself.

In our opinion, the question as to whether a particular land is "land" u/s 3(14) to which the provisions of the Act are applicable would require determination of the question whether the land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry and that is a matter which has to be determined either in accordance with the provisions of sections 143 and 144 and if such a determination has not been made and such a question arises or is raised in a suit before a Court, the procedure laid down in section 331-A must be followed by the Court. This would be so even in a case where a building exists on the land and the land is claimed to be appurtenant to the building because in such a case it will be necessary to determine the extent of the land that is appurtenant to the building, i.e. whether the entire land or only a part of it is so appurtenant to the building and for that reason is not held or occupied for purposes connected with agriculture, horticulture or animal husbandry. This determination has to be made in accordance with the provisions of sections 143 and 144 or section 331-A of the Act.

12. Only on the ground that building has been constructed over a bhumidhari land its nature is not automatically changed. Mere construction of the building is not sufficient to oust the jurisdiction of Revenue Court. The Revenue Court has jurisdiction to hold as to whether the building is used for the purposes of agriculture, animal husbandry or poultry farming or for industrial or commercial purposes so as to oust the jurisdiction of Revenue Court. It is the Revenue Court, who has exclusive jurisdiction under sections 143 and 331-A to determine this

issue. The jurisdiction of Revenue Court is not ousted by mere raising the plea. Thus the proposed amendments do not offend the jurisdiction of the Court and are not necessary for deciding the suit.

13. A Constitution Bench of Supreme Court in *Gulabhai Vallabhbhai Desai etc. Vs. Union of India (UOI) and Others*, considered the similar provisions and held that "land" means lands held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pastures or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans. Thus Revenue Court has jurisdiction to determine this question as to whether the buildings constructed over the land in dispute was being used for agricultural purposes or for industrial or commercial purposes so as to oust the jurisdiction of Revenue Court. In view of the Supreme Court cases, on the issue, the cases cited by the Counsel for the petitioners cannot be relied upon. Impugned orders do not suffer from any illegality. The writ petition has no merit and is dismissed.