

(1996) 07 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2505 of 1981

Chheda Singh and Anr.

APPELLANT

Vs

District Judge Fatehpur & Ors.

RESPONDENT

Date of Decision : 20-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Specific Relief Act, 1963 — Section 15(c)

Citation : (1996) 07 AHC CK 0039

Hon'ble Judges : A.B.Srivastava, J

Judgement

A.B. Srivastava, J.—Impugned judgement by means of this writ petition are order dated 16.4.1980 of the Munsif Fatehpur allowing the amendment of the plaintiffs pleadings and the order dated 21.11.1980 of the District Judge Fatehpur affirming the same.

2. Suit filed by the plaintiffrespondent No. 3 was for specific performance of a contract of Sale. The existence of the agreement pleaded and the liability to execute the saledeed was denied by the petitioners who were defendants in the suit. Hearing in .the case had concluded, it was reserved for judgment when the plaintiff moved an application to amend the plaint to say that plaintiff has always been ready and willing to perform the essential terms of the contract, despite being opposed, the same was allowed by the Courts below.

3. The impugned orders are sought to be assailed on the ground of allowing the amendment at belated Stage and reopening the evidence being against law.

4. The Court's power to allow the amendment at any stage is not disputed. What is contended by the learned counsel for the petitioner is that amendment in the facts of this case should not have been allowed. This Court is unable to appreciate this contention. If amendment could be allowed at the first and second appellate stage, it could not be declined at the trial stage, simply on the ground of delay. Allowing a party to plead the ingredients of Section 15 (c) of the Specific Relief Act, 1963 does not on its own, amount to accepting the same as

proved. It will still be the burden of the plaintiff to prove it by cogent and reliable evidence.

5. For the delayed move to amend pleadings is true the costs awarded Rs. 257 was low and considering that the case was being relegated back to the State of additional evidence, the costs should have been more, but now after 17 years, in writ jurisdiction the same need not be interfered.

6. For all above reasons, this writ petition being devoid of merit deserves to be dismissed.

7. The writ petition is hereby dismissed. The interim order dated. 22.1.1981 is vacated. The suit being of the year 1977, the trial Court is directed to fix a strict time schedule and dispose it of finally within three months from the date a certified copy of this order is presented before it. Office is directed to despatch a copy of this order within two weeks positively.

8. There shall be no order as to costs.