
(2006) 01 AHC CK 0010
In the Allahabad High Court
Case No : C.M.W.P. No. 4897 of 2006

Daya Shankar Lal Gupta

APPELLANT

Vs

Ambika Prasad and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 3
Constitution of India, 1950 — Article 226

Citation : (2006) 3 AWC 2473 : (2006) 100 RD 554 : (2006) 1 RD 554

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : P.K. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard learned Counsel for the petitioner.

2. In this petition under Article 226 of the Constitution of India, the orders of the court below dated 21.1.2004 and 22.8.2005 have been challenged,

3. In a suit for cancellation of the sale deed the plaintiff No. 1 had died and accordingly an application for his substitution was moved by the plaintiff Nos. 2 and 3, who are sons of the deceased. The said application has been allowed and a prayer for amendment in the plaint, which was also included in that application, has also been directed to be incorporated.

4. Learned Counsel for the petitioner submits that the order permitting some amendment other than necessary for the purpose of substitution of the deceased plaintiff is illegal order and it cannot sustain. The learned Counsel has pointed out to the paragraph of substitution application, Annexure-4. The proposed amendment against which the petitioner appears to be aggrieved is contained in para 7 of the said substitution application, which shows that the appellant No. 1 during his life time has been in possession over the disputed property and after his death, the plaintiff Nos. 2 and 3 have taken over the possession of the said

property. Learned Counsel has tried to emphasise that this amendment proposed in a petition under Order XXII, Rule 3, Section 151, C.P.C. could not be permitted, as it is not a case of the plaintiff that they had possession over the said property in question prior to filing of the suit. Learned Counsel for the petitioner has tried to infer this factual aspect from out of the relief claimed in the plaint whereby the plaintiffs have also sought for permanent injunction directing the petitioner defendant from raising any construction in the disputed property.

5. I am not in agreement with the submissions made by the learned Counsel for the petitioner. The copy of the plaint has been filed on record and in paragraph-9([k) it has been specifically mentioned that the plaintiffs are the owners in possession over the disputed property and the defendants have absolutely no concern with the same. The proposed amendment, which was sought to be made in the plaint, in the application under Order XXII, Rule 3, C.P.C. can maximum be said to be supplementing the factual position, as demonstrated in Para 9([k) of the plaint and it will not be in any case deemed to be a case altogether newly adopted by the plaintiffs by virtue of the amendment, which they sought in the substitution application. However, It is also submitted by the learned Counsel that the application under Order XXII, Rule 3, C.P.C. is not supposed to contain a prayer for such amendment. May be that application, which is required to be given under Order XXII, Rule 3. C.P.C. relates to the prayer for substitution of the deceased party alone yet if some additional amendment has been sought by the plaintiffs and allowed by the Courts below, the order so passed In this context cannot be said to be wholly illegal. Before the Courts below. It so appears from perusal of the impugned orders, that this objection had not been pressed.

6. In the aforesaid view of the matter, the orders impugned do not appear to have any legal or procedural flaw and no interference In this petition under Article 226 of the Constitution of India, is required. The writ petition is hereby dismissed.