

(2016) 09 SHI CK 0123
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 251 of 2014

Deepak Bhatia

APPELLANT

Vs

Komal Bhatia

RESPONDENT

Date of Decision : 05-09-2016

Acts Referred:

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

Citation : (2017) AIRCC 231 : (2017) 2 CivCC 214

Hon'ble Judges : Mr. Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Mr. Suneet Goel, Advocate, for the Petitioner; Mr. K.D. Sood, Sr. Advocate with Mr. Dhananjay, Advocate, for the Respondents Nos. 1, 3 and 4; None, for the Respondent No.2

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J. (Oral) - Both the petitioner and the respondent had set up rival wills qua the suit property of their common predecessor-in-interest. The plaintiff/respondent herein (for short the "plaintiff") had initially in the plaint omitted to graphically display therein qua the property alienated to him under a testamentary disposition of his predecessor-in-interest standing comprised in 7 shops besides other residential accommodation. However the plaintiff by moving an application under Order 6, Rule 17 CPC sought leave of the Court to overcome the aforesaid defect qua the descriptions of the corpus of the property alienated to him under a testamentary disposition made in his favour by his predecessor-in-interest.

2. The application stood contested by the defendant/petitioner herein before the learned trial Court. However the learned trial Court had ordered for incorporation in the plaint of the apposite amendments manifested in paragraph 2 of the apposite application under Order 6, Rule 17 CPC as stood preferred there before by the plaintiff.

3. The learned counsel for the petitioner/defendant had made a vociferous address qua the factum of according of relief to the plaintiff/respondent herein by the learned trial Court whereby he stood permitted to incorporate in the plaint the afore-stated amendments being grossly astray from the enjoined tenets governing the exercise of jurisdiction by it while standing seized with an application under Order 6, Rule 17 CPC significantly with the plaintiff despite his holding knowledge qua the graphic descriptions of the corpus of the suit property his at the outset omitting to aver the apposite narrations qua it in the plaint whereupon he contends of his omissions aforesaid constituting an embargo against the plaintiff qua his belatedly asking for its standing added in the relevant paragraphs of the plaint. Moreso when he despite knowledge qua the aforesaid facet omitted at the outset to seek its incorporation in the plaint renders him amenable for his standing construed to be indiligent whereas only on evidence displaying qua despite his initially exercising due diligence, his apposite lack of concert thereat warranting its standing condoned by this Court besides giving leverage to him to belatedly seek its incorporation. He proceeds to contend of the application warranting dismissal also he contends of the impugned order meriting interference.

4. Though the learned counsel for the petitioner/defendant herein holds leverage to contend of with the plaintiff at the stage of his instituting the suit his holding a testamentary disposition whereupon an inference ensues of his imminently holding knowledge qua the graphic descriptions of the corpus of the property alienated in his favour under a testamentary disposition recorded in his favour by his predecessor-in-interest. Also he holds leverage to contend of at the outset hence the plaintiff standing enjoined to unravel its descriptions by casting apposite averments in the plaint. However even if the aforesaid contentions do constrain this Court, of the plaintiff despite his at the outset holding knowledge qua the facet aforesaid his yet derelicting to embody it in the plaint not empowering him to coax this Court qua despite at the outset exercising due diligence his standing disabled to unearth the relevant facet/facets whereupon he may espouse qua given his at this stage unearthing the aforesaid facets, this Court exercising indulgence in his favour qua permitting him to incorporate in the plaint.

5. Dehors the aforesaid facet of may be the plaintiff standing disabled to at this stage seek their incorporation in the plaint yet with the plaintiff in his relevant application explicating qua the necessity of their incorporation also only when despite his exercising due diligence at the outset he was unable to unravel the aforesaid facets which now stands unearthed would empower this Court to exercise indulgence in his favour qua permitting him to incorporate it in the plaint whereas for the reasons aforesaid given his evidently holding knowledge qua the aforesaid facets he cannot for reiteration contend qua despite his exercising due diligence at the outset his standing disabled to disinter the relevant facts nor this Court would hence be constrained to exercise indulgence vis-a-vis the respondent herein. Consequently given the dire necessity of its

incorporation therein renders it to be clarificatory also when it prima-facie is in commensuration with the corpus of the property alienated to the plaintiff under a testamentary disposition qua it, executed by the deceased testator besides hence on its concluding the trite factum qua its standing unflinchingly proven to be validly and duly executed would ultimately facilitate the rendition by the learned trial Court of an executable decree in commensuration thereof qua it . In face thereof, as a corollary for facilitating the aforesaid, it is deemed fit to order for their incorporation in the relevant paragraph of the plaint, theirs being merely clarificatory also when the relevant amendments, if permitted to be incorporated would not substantially alter the nature, complexion and structure of the plaint.

6. Also the learned counsel for the petitioner herein has contended of the plaintiff belatedly asking for incorporation in paragraph 5 of the plaint, the amendments cast in his application under Order 6, Rule 17 CPC. He also contends of the permission as sought for by him from the learned trial Court besides its rendition in affirmation thereto warranting interference. The aforesaid submission also warrants it standing discountenanced, as the plaintiff is concerting to negate the valid and due execution of a testamentary disposition executed by the deceased qua the suit property vis-a-vis the defendant. In case the plaintiff succeeds in the aforesaid concert, the inevitable consequence thereto would be of the mutation in consonance thereto as stands attested by the revenue officer also falling apart. Moreover, when the defendant can on the anvil of the afore-stated averments ask for an apposite issue of estoppel being struck for barring the plaintiff qua his challenging the relevant testamentary disposition of the deceased testator. Consequently since the defendant may ask for the striking of the aforesaid issue also when the defendant would be permitted to adduce evidence thereto, the factum of its standing permitted to be incorporated in the plaint otherwise also when the validity of the relevant mutation rests upon the learned trial Court pronouncing upon the factum of the testamentary disposition standing efficaciously proven or not proven to be validly and duly executed, any belated permission for its incorporation in the plaint is also clarificatory also does not alter the nature, construction or complexion of the pleadings rather is facilitative to the defendant to on anvil thereof stake a claim qua striking of an apposite issue of estoppel qua it vis-a-vis the plaintiff also is facilitative for begetting concurrence in the relevant judicial verdict vis-a-vis it and the trite factum of proof of valid and due execution of the relevant testamentary execution propounded by him.

7. There is no merit in this petition, the same is accordingly dismissed. All pending applications stand disposed of accordingly. Impugned order stands maintained and affirmed. The parties through their learned counsel are directed to appear before the learned trial Court on 28.9.2016.

8. The learned trial Court is directed to decide the suit within a period of one year.

9. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the learned trial Court shall decide the

matter uninfluenced by any observation made herein above.