

(2015) 01 KAR CK 0147

In the Karnataka High Court

Case No : Writ Petition No. 7128/2013 (GM-CPC)

Dhanamani and Others

APPELLANT

Vs

P. Babu and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 2, Order 6 Rule 17

Citation : (2015) 01 KAR CK 0147

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Sowmya Lakshmi Bhat, Advocate for Vijay Krishna Bhat, for the Appellant; T. Sheshagiri Rao, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Defendants 1 to 10 in O.S.5384/2006 on the file of the IX Addl. City Civil and Sessions Judge, Bangalore city aggrieved by the Order dated 4.1.2013 allowing plaintiffs IA under Order 6 Rule 17 CPC to amend the plaint have presented this petition.

2. Briefly stated facts are:

"(a) Respondents 1 and 2, jointly, instituted O.S.5384/2006, for permanent injunction to restrain petitioners arraigned as defendants 1 to 10 from interfering with the peaceful possession and enjoyment of the suit schedule property comprising of site Nos. 1 to 13 carved out of Sy. No. 6 of Kodandarama Garden (K.R. Garden) II Stage, Jeevanahally Cox Town, BMP Ward No. 86, Maruthi Sevanagara, Bangalore, with boundaries on:

East: by private property site No. 16-23;

West: by private property;

North: by drain; and

South: by road.

(b) In that suit, it was alleged that though the plaintiffs had purchased 20,000 sq.ft. of immovable property under several sale deeds executed by their vendor in title, following which their names were recorded in the fiscal registers of the Bruhat Bangalore Mahanagara Palike and paid taxes, nevertheless plaintiffs' vendors had permitted defendants, none other than the construction workers to temporarily stay in a portion of the suit schedule property measuring approximately 1550 sq.ft. until the end of May 2006. Identifying such area by way of hand sketch, it was further alleged that defendants promised to vacate the portion of the suit schedule property within four days and despite requests having not vacated the premises, hence constrained to institute the suit.

(c) Suit was opposed by filing written statement of the defendants, inter alia, denying that they were squatters and that the area was declared as a slum under The Karnataka Slum Areas (Improvement and Clearance Act) 1973, and that they had obtained necessary permissions, BPL ration card, identity card from the Election Commission of India, put up construction of dwelling units provided with electricity and drainage facilities.

(d) Having noticed the assertions of the defendants in the written statement, plaintiffs filed an application under Order 23 Rule 2 CPC seeking leave to withdraw the suit and to file a fresh suit on the same cause of action which was turned down by the trial Court leading to the institution of W.P. 29568/2011, whence, this court dismissed the petition on 23.11.2012 with liberty to the plaintiffs to seek amendment of the plaint.

(e) In compliance with the said order plaintiffs filed IA under Order 6 Rule 17 CPC to amend the plaint to insert paragraphs and additional prayer for declaration and possession. In the affidavit to the application, it was pointed out that since the defendants, in the written statement, denied the title of the plaintiffs, therefore, the necessity for alternative relief of declaration; coupled with the fact that defendants asserted to be in lawful possession required the alternative relief of possession of the encroached portion.

(f) The amendment proposed was to delete paragraph 3 of the plaint describing the suit schedule property and to insert, in its place, pleadings, amplifying the fact of purchase of sites, execution of the sale deeds, construction of buildings in Sy. Nos. 157 to 159 for the Karnataka Housing Board to rehabilitate slum dwellers, by engaging the defendants as construction workers and erecting temporary thatched huts, while on humanitarian ground, vendors in title permitted the defendants to stay until completion of the construction of the building by KHB, in addition to the exact measurements of the land in possession of the defendants, as also reason for the reliefs of declaration and possession.

(g) That application was opposed by filing objections inter alia contending that the amendment would change the nature of suit, since, the frame of the suit for bare injunction is to be converted to declaration and allegation of alleged

encroachment of 1550 sq.ft is to be changed to 4000 sq.ft and further that the amendments were more argumentative in nature. In addition, it was stated that the schedules set out in the plaint would stand changed by the amendment."

3. The trial Court having regard to the permission granted by this Court to the respondent to file an application for amendment of the plaint coupled with the pleadings of the parties, raised points for consideration, recorded reasons, findings and conclusions, declining to accept the plea of the petitioners (defendants 1 to 10) and allow IA under Order 6 Rule 17 CPC by the order impugned.

4. The submissions of the learned counsel for the petitioners reiterating the averments in the statement of objections to the IA under Order 6 Rule 17 CPC being the very same contentions when advanced before the trial Court were negated. In the facts and circumstances, the submissions ex-facie are devoid of merit and in fact, are specious pleas.

5. It is useful to notice the following relevant reported opinions of Courts in the matter of permitting amendments to pleadings:--

"a) In *Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others*, it is held that Order 6 Rule 17 CPC is partly directory and partly mandatory and wide discretion is granted to the Court to allow the application for amendment of pleadings if the amendment is required for resolving the real controversy between the parties;

b) In *Pankaja and Another Vs. Yellappa (D) by Lrs. and Others*, it is held that if an amendment subserves the ultimate cause of justice and avoids further litigation, it has to be allowed and the facts and circumstances warrant the amendment has to be allowed even if it is time barred;

c) In *B.N. Kamalanabha Reddy Vs. Munivenkatappa and Others*, , this Court held that there is no blanket ban on allowing amendment even after commencement of the trial and courts have to be liberal, so as to meet the ends of justice, to avoid parties from instituting subsequent litigation."

6. The principles enunciated in the matter of amendment of pleadings under Order 6 Rule 17 CPC, in catena of decisions can be summarized thus:

"i) all amendments should be allowed which are necessary for determining the real controversy in the suit;

ii) proposed amendment should not alter and be a substitute for cause of action on the basis of which original lis was raised;

iii) inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegation of facts would not be allowed to be incorporated by means of amendment;

iv) proposed amendment should not cause prejudice to either side which can not

be compensated by means of cost;

v) amendment of claim barred by time should not be allowed;

vi) no amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time;

vii) no party should suffer on account of technicalities of law and the amendment should be allowed to minimize the litigation between the parties;

viii) error or mistake if not fraudulent shall not be made a ground to reject the application for amendment of pleadings.

7. If regard is had to the observations of the reported opinions of Courts and the principles enunciated therein in the matter of permitting amendment to pleadings under Order 6 Rule 17 CPC and applying the same to the facts of this case, none of the contentions advanced by the petitioners, as aired by their learned counsel, have merit in declining the plaintiffs' right to amendment of the plaint. Apparently the proposed amendments do not either create a new cause of action or change the nature of the suit, while it is well established that alternative relief of declaration and possession is permissible by way of amendment. In my considered opinion, the order of the trial Court is well merited, fully justified and does not call for interference.

Petition devoid of merit is rejected.

Though it is a fit case to impose extraordinary cost for having consumed public time, unnecessarily nevertheless since learned counsel for the petitioners submits that the petitioners are slum residents, it is appropriate to waive costs.