

(2005) 02 AHC CK 0233

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7822 of 2005

Gulam Mohammad through Power of Attorney Holder Mohd. Irfan APPELLANT

Vs

Chuttan and Others RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

Citation : (2005) 3 AWC 2593

Hon'ble Judges : P. Krishna, J

Bench : Single Bench

Advocate : K.M. Garg, for the Appellant;

Final Decision : Dismissed

Judgement

P. Krishna, J.—The petitioner, Gulam Mohammad, through power attorney holder Mohd. Irfan who is defendant No. 15 in suit No. 244 of 1997, has filed the present writ petition against an order allowing the amendment: of the plaint in a suit for partition filed by the respondent No. 1.

2. The facts giving rise to the present writ petition for the purposes of its disposal briefly stated are as follows:-

The respondent No. 1 filed suit No. 244 of 1997 impleading 14 persons as defendants for partition of two properties described in the plaint. He claimed 4/9 share in the property No. 1 and 2/9 share in property No. 2. The present petitioner was not initially impleaded as one of the defendants in the suit. It appears that the present petitioner was subsequently impleaded as defendant No. 15 in the suit and he filed a written statement and also claimed partition of his 2/3 share in the property No. 1 and pleaded that he has become the owner of the property No. 2 by adverse possession. The parties led evidence in support of their respective cases and the dates in the suit were being fixed for final hearing. In the year 2003 one Smt. Sayra who is sister of the present petitioner filed an

application for her impleadment as one of the defendants in the suit. In the impleadment application she stated that she is cosharer in the disputed properties and is real sister of defendant No. 15 namely the present petitioner and there has been a compromise in between her and the present petitioner. The impleadment application filed under Order 1 Rule 10 was initially rejected by the trial court by the order dated 12th of September 2003 but in revision No. 30 of 2003, the Additional District Judge, Court No. 6 set aside the order of the trial court and directed to decide the impleadment application afresh in the light of the observations made in the order, vide order dated 31st of January, 2004. Thereafter an application No. 184 C was filed by Smt. Sayra, the defendant No. 16 and sister of the present petitioner for her impleadment before the trial court in view of the judgment delivered in Civil Revision No. 30 of 2003. The said application was allowed by the trial court by the order dated 25th August, 2004 and the plaintiff was directed to file the necessary amendment application for amending the plaint. In compliance of the aforesaid order the plaintiff respondent No. 3 filed an application dated 26.8.2004 for amending the plaint by impleading Smt. Sayra as defendant No. 16 in the array of the parties. This was numbered as application No. 198 -A. The said application was objected by the defendants on the pleas that the plaintiff has not sought consequential amendments in the plaint and has simply sought the addition of Smt. Sayra as defendant No. 16 in the array of the parties. The plaintiff respondent No. 1, therefore, filed another application a copy of which has been filed as Annexure No. 11 to the writ petition. By means of this application the plaintiff sought the addition of paragraph 2 A in the plaint. The said paragraph reads as follows:-

"Yah ki Badloo ke putra Karim Buksha ka intkal apane pita Badloo ke jeevankal mein ho gaya tha is prakar unake putra Munnu ko Badloo ka koyi tarka nahi mila tha aur na hi Munnu ke putra Gulam Navi Mohammad va usaki putri shrimati Sayara ko koyi haq va hissa vivadit jaydad mein nahin pahuncha isi karan usey ukta vad mein pakshakar nahin banaya gaya tha parantu nyayalaya ke adesh dinank 25.8.2004 ke anupalan mein use pratiwadni number 16 banaya jata hai."

3. This application has been allowed by the trial court by the order dated 22nd of September 2004. The present petitioner challenged the order allowing the amendment application unsuccessfully in revision No. 115 of 2004. The revisional court dismissed the revision on two points. It was of the opinion that the amendment has been sought in pursuance of the order passed by the revisional court and secondly the revision was not maintainable in view of the judgment of the Supreme Court given in the case of Prem Bakshi and Others Vs. Dharam Dev and Others, .

4. Heard Shri K.M. Garg, the learned counsel for the petitioner at the admission stage of the writ petition. He submitted that the court below committed illegality in allowing the amendment application. In support of his plea he took two points - firstly no opportunity of hearing was afforded to the petitioner before allowing the amendment application and secondly by allowing amendment application, the

plaintiff wants to resile from his own admission, which is not permissible under law.

5. He has placed reliance on few cases to show that an amendment which has effect of taking away admission of a party cannot be allowed. To meet the point that the revision was not maintainable as held by the Supreme Court in the case of Prem Bakshi and Others Vs. Dharam Dev and Others, , it was contended by him that the said ruling is not applicable to the facts of the present case. He placed reliance upon a judgment of the Supreme Court in Ashwani Kumar Singh v. U.P. Public Service Commission 2003 AIR S.C.W 3387 and contended that the Court should not place reliance on the decision without discussing as to how the factual situation fits in with a factual situation of the decision on which reliance is placed.

6. Having heard the learned counsel for the petitioner at great length I am unable to accept either of the submissions of the learned counsel for the petitioner.

7. Taking up first point first I find that the contention of the petitioner that no opportunity of hearing was afforded to him is not correct. The impugned order dated 22.9.2004 passed by the trial court clearly shows that the said order was passed after hearing the counsel for the parties. From the order it does not appear that any time to file objection was prayed for by the petitioner and the same was not granted by the trial court. The said order was passed in the presence of the counsel of the parties after hearing them. Besides the above the amendment sought for in the plaint does not change the nature of the case. It may be recalled here that Smt. Sayra, the defendant No. 16 and her brother, Gulam Mohammed, the present petitioner were impleaded in the suit after its institution. The plaintiff was asked to implead Smt. Sayra by the Court on the application filed by Smt. Sayra for her impleadment under Order 1 Rule 10 C.P.C. An objection was raised by the defendants when initially a simple application was filed for impleadment of Smt. Sayra as defendant No. 16 that the plaintiff has not sought consequential amendment in the plaint allegations. Taking a clue from the objections raised by the defendants, the plaintiff filed the present amendment application. The defendants are taking shifting stand in as much as earlier they objected that consequential amendment has not been sought in the plaint.

8. Even assuming for a moment that the Trial Court did not invite any objection in writing from the defendants before allowing the amendment application, the petitioner's case is not in any way prejudiced. In the writ petition before this Court or in the memo of revision filed before the court below there is not even a slightest whisper as to how the petitioner is prejudiced for not inviting objections in writing by the trial court. Needless to say that the petitioner will have a right to file additional written statement in reply to the amended plaint allegations.

9. The scope of revisional court is a very limited one and is circumscribed by the conditions mentioned therein. One of the conditions for the exercise of revisional

jurisdiction is that if the order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made. In the present case the petitioner has not shown that the amendment as granted by the trial court in the plaint if allowed to stand, would occasion a failure of justice or cause irreparable injury to him.

10. Few rulings were referred by the learned counsel for the petitioner in support of his submission that an amendment which affects admission made by a party should not be permitted to be incorporated in the pleadings. To the query of the Court as to how and in what manner the proposed amendment takes away admission, if any, made by the plaintiff, the counsel for the petitioner placed reliance on one sentence of para 3 of the statement of the plaintiff. He invited my attention towards para 3 of the deposition of the plaintiff as PW-1 wherein the plaintiff has stated that after the death of Badloo, his son Rahim Bux alone was the heir. Becha and Karim Bux did not die before him (plaintiff). These persons had expired about 65 years ago. Reading the aforesaid portion of deposition of the plaintiff alongwith the paragraph 2 A of the plaint it is difficult to accept the plea that the plaintiff wants to resile from any admission made in his oral deposition. Elaborating argument the learned counsel for the petitioner submitted that from the above passage an inference has to be drawn which runs contrary to the averments of the paragraph - 2 A of the Act. The said contention is misconceived and cannot be accepted. Therefore, I am satisfied that the trial court was justified on merits to allow the application for amendment in the plaint by incorporation of para 2 A therein. There appears to be a dispute between the parties with regard to the family pedigree. The party shall prove the family tree through the evidence. The defendant No. 16 Smt. Sayra Bano has come forward with the case claiming himself to be cosharers in the disputed property. According to the plain till she is not a cosharer in the disputed property therefore was not initially impleaded in the suit. But on her insistence she is being impleaded and with that regard the plaintiff was justified to make necessary amendment in the plaint by incorporating paragraph 2A.

11. In this connection it is relevant to notice paragraph 6 of the judgment of Supreme Court in the case of Prem Buxy and Ors. v. Dharam Dev (Supra) which reads as follows:-

"Now the question is whether the order in question has caused failure of justice or irreparable injury to respondent No. 1. it is almost inconceivable how mere amendments of pleadings could possibly cause failure of Justice or irreparable injury to any party. Perhaps the converse is possible Le. refusal to permit the amendment sought for could in certain situations result in miscarriage of Justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment would even remotely cause failure of Justice or irreparable injury to any party.

12. In the above case of Prem Buxy (Supra) the Supreme Court interpreted Section 115 of C.P.C. which puts restriction on the power of the High Court in as much as while exercising revisional jurisdiction, the revisional court cannot interfere in the order of the Trial Court except where (i) the order made would have filially disposed of the suit or other proceedings or (ii) the said order would occasion a failure of justice or cause irreparable injury to the party against whom it was made. The Apex Court set aside the order passed by the High Court in the exercise of its revisional jurisdiction interfering with an order passed by the trial court allowing amendment of pleadings. In view of this the revisional court rightly refused to interfere in the matter. On this count also the petitioner fails and the writ petition is liable to be dismissed.

13. Before parting with this case it appears from the ; record that the present petitioner who claims himself in possession of property No. 2 as trespasser and having prescribed title by adverse possession is delaying the disposal of the suit by adopting delaying tactics and does not deserve any sympathy of the Court. It has come on record that Irfan son of the petitioner who is also according to the petitioner his power of attorney holder has appeared as a witness in the suit on behalf of the petitioner. He is also son-in-law of Smt. Sayra Bano - defendant No. 16. The impleadment application although was allowed by the revisional court was filed at a belated stage after the close of the evidence and at the time when the suit was ripe up for hearing and the dates for final hearing were being fixed. This shows that the present petitioner is interested to delay the disposal of the suit and forestall the suit proceedings. It is, therefore, necessary to direct the trial court to decide the suit expeditiously in as much as it is ripe up for hearing since the year 2003 itself. The trial court shall make endeavour to dispose of the suit preferably within a period of 6 months.

14. In the result the writ petition lacks merits and is dismissed summarily with the aforesaid observation.