

(2011) 02 GUJ CK 0010

In the Gujarat High Court

Case No : Civil Revision Application No. 265 of 2010

Harijan Nathabhai Nathubhai Balwa and Another	APPELLANT
Vs	
Harijan Navin @ Navneet Veera Chudasma and Another	RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 115

Citation : (2011) 02 GUJ CK 0010

Hon'ble Judges : Bankim N. Mehta, J

Bench : Single Bench

Advocate : A.R. Thacker, for the Appellant; Satyam Y. Chhaya, for the Respondent

Final Decision : Allowed

Judgement

Bankim N. Mehta, J.—By filing this revision application u/s 115 of the CPC, the Petitioners - original Plaintiffs have challenged the order passed by the learned JMFC, Mangrol on 28.10.2010 below application Exh-93 in Regular Civil Suit No. 154 of 2000 rejecting the prayer to amend the plaint under Order 6 Rule 17 of the CPC.

2. According to the Petitioners, the suit was filed for declaration and permanent injunction and to set aside the sale deed allegedly executed on 16.3.1999. But, inadvertently, due to typographical error in the prayer clause, date of 15.3.1999 was typed in place of 16.3.1999 and therefore, correction was sought in the date mentioned in the prayer clause.

3. The learned trial Judge after hearing the learned advocates for the parties, rejected the application. Hence, this revision application.

4. I have heard learned advocate Mr. Thacker for the Petitioners and learned Mr. Satyam Chhaya for the Respondent No. 1 at length and in great detail. Respondent No. 2 is served, but she has remained absent.

5. It appears from the copy of the plaint annexed with the memo of revision application that in the suit, the Petitioners - original Plaintiffs challenged execution of document dated 16.3.1999, but inadvertently, in the prayer clause, instead of 16.3.1999, date of 15.3.1999 was typed. The Petitioners have sought amendment of the date in the prayer clause. It appears from the averments made in the plaint that the Petitioners in fact challenged the execution of document dated 16.3.1999, but due to typographical error, the date was typed as 15.3.1999. It is settled legal proposition of law that the amendment of pleading has to be allowed more liberally when the amendment sought to be carried out does not change the nature of the suit or prayer made therein. In the present case, it appears that on account of typographical error, different date was typed in the prayer clause. Therefore, in order to do substantive justice, the amendment sought for by the Petitioners ought to have been allowed by the trial Court. In my view, the learned trial Judge has committed error in not exercising the jurisdiction vested in it. Therefore, the impugned order is required to be set aside.

6. In the result, the revision application is allowed. The impugned order passed by the learned JMFC, Mangrol on 28.10.2010 below application Exh-93 in Regular Civil Suit No. 154 of 2000 is quashed and set aside and amendment, as prayed for in application Exh-93 in Regular Civil Suit No. 154 of 2000, is allowed. The Petitioners Plaintiffs to carry out amendment within 30 days from today.

7. It is made clear that the observations made in this order are not on the merits of the case and the trial Judge shall proceed further with the suit in accordance with law uninfluenced by the observations made in this order.

8. Rule is made absolute. Interim relief granted earlier stands vacated. Direct service is permitted.