

(2017) 08 UK CK 0030
In the Uttarakhand High Court
Case No : 2063 of 2007 (M of S)

Jaipal Singh

APPELLANT

Vs

Samajik Vaniki and another

RESPONDENT

Date of Decision : 25-08-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 6 Rule 17](#)

Citation : (2017) 08 UK CK 0030

Hon'ble Judges : Sharad Kumar Sharma

Bench : Single Bench

Advocate : Sanjay Kumar, Tapan Singh, Pankaj Purohit

Final Decision : Dismissed

Judgement

1. The provision of Order 6 Rule 17 of the C.P.C. contemplates the manner in which the amendment in the pleading already made by the parties should be brought out at any stage of proceedings. The provisions of Order 6 Rule 17, in its proviso, contemplates that no application for amendment can be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the amendment sought by party to the suit could not be raised earlier, before the commencement of the trial.
2. This provision has to be looked into from another view point that the amendment in the pleadings cannot be claimed as a matter of right, because the prerogative of bringing about the amendment in the pleading by invoking provisions of Order 6 Rule 17 has given the responsibility to the Court which may, on satisfaction of conditions, meaning thereby, merely on filing of an application, it does not mean that it had to be allowed.
3. It is always the prerogative of the Court which may subject to the conditions laid down under Order 6 Rule 17 allow the amendment application. This case stands on altogether a different pedestal. In this case, the petitioner had

instituted a suit for a decree of permanent injunction in relation to a shop situated on land, bearing plot No. 59, Chandighat, Haridwar having an area of 9ft. x 8 ft. and they sought for an injunction in nature of a restrain from interference over the property.

4. The suit, thus, filed on 26.09.1997, was contested by the defendant respondent, herein, and they came up with the case that the property in question comes within the Plantation Division, Kotdwar, which in 1994 and 1995 has fallen in the Forest Division of Haridwar and since the shop has come into existence on a reserved forest area, thus, even the allotment which has been made, could not be sustained now in view of the Forest Act, apart from the fact that, it was granted for two years only, and once it is fixed term licence of using of the property, it comes to an end automatically with lapse of time extended time as per the terms of the licence.

5. Based on the rival contentions, it is an admitted case of the petitioner and as pleaded in para 4 of the writ petition that the Court framed the issues and after framing of the issues, the arguments were heard, meaning thereby, the Court has scrutinized the evidences adduced by the parties and only a judgment was required to be pronounced by the Trial Court. At this stage, i.e. the period between the conclusion of the argument and pronouncement of judgment, the amendment application was filed by the petitioner seeking amendment in the plaint.

6. This application for amendment as sought by the petitioner was that the injunction suit was being sought to be made as a suit for declaration, praying that he may be recorded as an owner and he may not be evicted except with due process of law.

7. This amendment application of the petitioner was rejected by the order dated 6th April, 2005. Admittedly, the order dated 6th April, 2005, rejection of the amendment application was not challenged by the petitioner, in any superior proceedings. Ultimately, the suit was dismissed by the judgment dated 12th April, 2005, against which, the petitioner preferred a First Appeal No. 26 of 2005. In the said regular Appeal under Section 96, yet again, the petitioner filed an identical application for amendment almost seeking the same amendment, which already stood denied by the order dated 6th April, 2005. It is this order of rejection of amendment application by the Appellate Court, which is under challenge in this writ petition, being the order dated 26th September, 2007.

8. The argument of the learned counsel for the petitioner is that the amendment application has been rejected by the Appellate Court on the ground that the same has been filed belatedly. He submits that an application for amendment cannot be rejected on the ground of delay. This philosophy of rejection of the amendment application on the ground of delay and the argument extended by the learned counsel for the petitioner is supporting his case on the basis of the judgment rendered by the Apex Court in the case of Mahila Ramkali Devi and

others Vs. Nandram (D) Thr. Lrs. And others reported in 2015 2 UAD (SC) 518, wherein it is propounded that an amendment application cannot be

rejected on the grounds of delay. This Court is not in agreement with the argument of learned counsel for the petitioner, as far as placing reliance on judgment, for the reasons:-

I. In the judgment, as relied, was emanating from Section 164 of Madhya Pradesh Land Revenue Code. Furthermore, this was a case which was not dealing with the situation where amendment application was already rejected by the Trial Court and which remained challenged and the same amendment was put to in the appeal.

II. Furthermore, this case was not dealing with the situation where the amendment application as rejected on 6th April, 2005, makes the petitioner conscious about the amendment which he desired to make in the suit but even after filing of appeal, he sat over the issue for two years and then filed application for amendment seeking the same amendment which was rejected on 6th April, 2005. In that view of the matter, this judgment does not support the case of the petitioner. Hence, this Court denies to accept the proposition as propounded by the petitioner.

9. The another judgment which he places reliance is in the case of M/s Om Rice Mill, Jaspur (Nainital), Udham Singh Nagar & others Vs. Banaras State Bank Ltd., Kashipur reported in [2000 (2) JCLR 14 (All)].

10. In this case, the learned Single Judge of Allahabad High Court was dealing with the situation where the amendment application which was rejected was submitted after the fixation of date for delivery of the judgment, and

thus, the Court held that even after the conclusion of the arguments, when the date is fixed for the delivery of the judgment, then to the amendment application could be filed. This ratio as relied by the petitioner, if at all could have been of any help to him, it would have been only when the petitioner had challenged the order dated 6th April, 2005 and not the order dated 26th September, 2007, under challenge in the present writ petition.

11. Since, the petitioner himself has set over the order dated 6th April, 2005, and filed the amendment application at the appellate stage, this Court feels that the rejection of the amendment application by the impugned order do not suffer from any apparent error of law.

12. Hence, the writ petition is dismissed. No order as to cost.