

(2015) 02 KAR CK 0319

In the Karnataka High Court

Case No : Writ Petition No. 55151/2014(GM-CPC)

Kaiwara Amara Nareyana Yethindra Temple Trust (Regd.) and
Others

APPELLANT

Vs

M. Srinivas

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

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

Citation : (2015) 02 KAR CK 0319

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Jagadesh C.K., for the Appellant; S.S. Halalli, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—Petitioners are defendants in O.S. No. 16/2009 on the file of the Additional Civil Judge and JMFC, Chintamani, being aggrieved by the order dated 15-09-2014 rejecting I.A. No. 10 filed under Order VI Rule 17 of CPC filed this writ petition.

2. The respondent herein filed a suit seeking for declaration, declaring that plaintiff is the absolute owner of the suit schedule property and also mandatory injunction for removal of the compound wall and also permanent injunction restraining the defendants from interfering with the peaceful possession for other reliefs. The contesting defendants filed written statement. On the basis of the pleadings of the parties, the Trial Court framed issues. The parties have lead their evidence. The case was posted for arguments. The plaintiff has addressed his arguments. During the course of arguments of the defendants, the defendants filed I.A. No. 10 invoking Order VI Rule 17 of CPC seeking amendment of the written statement raising additional plea of adverse possession. The plaintiff filed objections to the said application contending that at this belated stage, the defendants cannot make an application for amendment of

the written statement incorporating the new ground and it will change the cause of action and nature of the suit. Hence, they sought for dismissal of the application. The Trial Court after examining the matter in detail and taking into consideration the nature of the amendment sought and also supporting affidavit rejected the application. Being aggrieved by the said order, the defendants have filed this writ petition.

3. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the order impugned and other relevant records.

4. The records clearly disclose that the plaintiff filed a suit seeking for declaration, mandatory injunction for removal of compound wall and also for temporary injunction restraining the defendants from interfering with his peaceful possession and contended that the said property was purchased from Shaik Mustan in the year 2004. However, the defendants are interfering with the peaceful possession and putting up compound wall. The contesting defendants filed written statement. After conclusion of the trial, when the case was posted for arguments, during the course of defendants' arguments, an application was filed seeking to raise a plea of adverse possession contending that the defendants have been in possession of the said portion of the property for the last 23 years. They have perfected their title by adverse possession and the plaintiff has no right whatsoever. In support of their said application, one of the Trustees of the defendant-Trust sworn to the affidavit. In the affidavit, it was stated that instructions has been given to the advocate to raise a plea of adverse possession, but the advocate has raised the said plea only during the course of the defendants' arguments. Subsequently, they had noticed the same and filed an application for amendment of the written statement.

5. Reading of Order VI Rule 17 of CPC makes it very clear that an application seeking for amendment of the written statement has to be filed before the commencement of the trial. In the instant case, on the basis of the pleadings of the parties, after the parties have lead their evidence and after conclusion of the trial, when the case was posted for defendants' arguments, the application was filed by the petitioners herein, which is clearly barred by the proviso to Order VI Rule 17 of CPC. The Trial Court taking into consideration all these aspects of the matter, rejected the application. I find no infirmity or irregularity in the order passed by the trial Court.

6. The Hon"ble Supreme Court has laid down a law that after commencement of the trial, the application seeking for amendment shall not be entertained unless due diligence is shown. In the instant case, reading of the affidavit clearly establishes that the application has been filed after conclusion of the trial and the amendment is an afterthought and no due diligence is shown. After conclusion of the trial, during the course of defendants' arguments, the amendment application cannot be entertained. There is no infirmity or irregularity in the order passed by the Trial Court. Accordingly, the writ petition is dismissed.

In view of dismissal of the writ petition, the I.A. No. 1/2015 for extension of stay does not survive for consideration. Hence, the same is rejected.