
(2012) 09 AHC CK 0160
In the Allahabad High Court
Case No : Rent Control No. 20 of 2003

Kesha Devi (Smt.) and 3 Others

APPELLANT

Vs

6th A.D.J., Sultanpur and 3 Others

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

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

Citation : (2012) 09 AHC CK 0160

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Final Decision : Allowed

Judgement

SaeedUzZaman Siddiqi, J.

By means of present writ petition, the petitioners have sought for quashing the order dated 16.01.2001, passed by VI Additional District Judge, Sultanpur in civil appeal no.135 of 1999 through a writ in the nature of certiorari.

The brief facts as emerged out from the pleadings of the writ petition are that regular suit no.392 of 1981 was filed by one Ram Dulare Verma, respondent no.2 in this petition and plaintiff before the learned trial Court, against Mewa Lal, which was decreed against which the petitioners filed civil appeal no.135 of 1999, which was pending in the Court of VI Additional District Judge, Sultanpur. During the pendency of the appeal, the petitioners moved an amendment application bearing Paper No.9A, which was rejected vide order dated 16.01.2001. The petitioners thereafter filed a civil revision before this Court bearing civil revision no.31 of 2001, which was dismissed as not maintainable, hence the petitioners filed the instant writ petition, which was admitted on 30.01.2003. During the pendency of this writ petition, the respondent no.2, namely, Ram Dulare Verma died whose heirs have been substituted. The respondents did not file any counter affidavit in spite of sufficient opportunities were granted by this Court. Today none is present on behalf of the respondents even when the case is taken up in the revised list.

I have heard learned counsel for the petitioners and have gone through the records.

The suit was filed for declaration, recovery of rent. Through Paper No.9A, the defendants have sought to mention of plot number of the disputed property and the new plot numbers allotted to the disputed property after consolidation. The learned first appellate Court has mentioned in his order that the plaintiff has not mentioned any plot number of the disputed property and the proposed amendment shall complicate the disposal of the suit.

The grounds given by learned first appellate Court are not tenable at law. The settled legal position is that all amendment should be allowed liberally, unless it is mala fide or adversely or prejudicially affects the disposal of the case or it amounts to withdrawal of the admission etc. The defendants can very well take it through amendment; even an inconsistent plea can be raised because of sole intention behind allowing amendment is final and full adjudication of all the disputes between the parties and avoidance of multiplicity of the litigation. The purpose and object of Order VI, Rule 17 of Code of Civil Procedure is to allow either party to alter or amend its pleadings, in such manner, and on such term as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings, in the interest of justice, on the basis of guidelines laid down by various High Courts and also by Hon''ble Apex Court. It is also settled that while disposing of an amendment application, the correctness or falsity of the case cannot be considered as merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage for allowing the prayer for amendment. On this score, the Hon''ble Apex Court has clarified the legal position in the case of Sampath Kumar Vs. Ayyakannu and another (2002) 7 SCC, 559. In Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon, AIR 1969 SC, 1267, the Hon''ble Apex Court has held, which reads as under :

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In Amulakchand Mewaram v. Babulal Kanlal, 35 Bom LR 569 = (AIR 1933 Bom 304) Beaumont, C.J., in delivering the judgment of the Bombay High Court set out the principles applicable to cases like the present and observed :

".....the question whether there should be an amendment or not really turns upon whether the name in which the suit is brought is the name of a nonexistent person or whether it is merely misdescription of existing persons. If

the former is the case, the suit is a nullity and no amendment can cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposite party can be compensated for by costs."

In *Amulakchand Mewaram's* case, 35 Bom LR 569 = (AIR 1933 Bom 304) a Hindu undivided family sued in its business name. It was not appreciated at an early stage of the suit that in fact the firm name was not of a partnership, but was in the name of a joint Hindu family. An objection was raised by the defendant that the suit as filed was not maintainable. An application to amend the plaint, by substituting the names of the three members of the joint family for the name of the family firm as plaintiffs, was rejected by the Court of first instance. IN appeal to High Court observed that a suit brought in the name of a firm in a case not with Order 30, Civil Procedure Code being fact a case of misdescription of existing persons, leave to amend ought to have been given."

In *Raghu Thilak D. John Vs. S. Rayappan and others*, (2001) 1 ARC 393, the Hon"ble Apex Court has observed that "the amendment sought would change the nature of the suit originally filed was not a reason for refusing application for amendment and that the dominant purpose of Order VI, Rule 17 was to minimise litigation and that the plea that the relief sought for by way of amendment was barred by time is arguable in the circumstances of the case."

In view of the law, as discussed above, the impugned order is not sustainable in the eyes of law. One of the grounds given by the learned lower appellate Court is that the suit is 17 years old and, if amendment is allowed, the case shall be remanded back and, as such, there is no need for amendment. The reasons given by the learned lower appellate Court are not in accordance with the settled legal position.

In the result, the writ petition is allowed and the impugned order dated 16.01.2001, passed by VI Additional District Judge, Sultanpur is quashed. The learned lower appellate Court shall allow the amendment on such terms as it deems fit, in the circumstances of the case, including payment of costs and an undertaking that the defendants shall not seek adjournment and shall keep his counsel ready with the case.