

(2012) 08 AHC CK 0180
In the Allahabad High Court
Case No : Writ C No. 41494 of 2012

Khaleel Ahmad

APPELLANT

Vs

Addl.District Judge (Court No.4) and Others

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

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

Citation : (2012) 08 AHC CK 0180

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Petitioner instituted a suit for cancellation of a saledeed dated 22.4.2004 registered before the SubRegistrar, Bijnor and for a decree of permanent injunction restraining the respondents No. 3, 4 and 5 from interfering in his possession over the suit land. Respondents No. 3, 4 and 5, who are defendants in the suit are contesting it and have filed their written statement.

2. In the suit after the evidence of the parties was over and the arguments were in progress an application paper No. 179 for amending the written statement was moved by respondents No. 3, 4 and 5. The said amendment application despite opposition from the petitioner has been allowed by the order dated 25.2.2012 and the petitioner's revision against the same has been dismissed by order dated 5.5.2012.

3. It is against the aforesaid orders dated 25.2.2012 and 5.5.2012 that the petitioner has preferred this writ petition and had prayed for the quashing of the same.

4. I have heard Sri Anil Sharma, learned Counsel for the petitioner and Sri Arun Kumar SinghI, learned Counsel who appears for respondents No. 3, 4 and 5. They have agreed for the final disposal of the petition on merits at the admission stage itself as the facts are not disputed and only legal question asto whether under the facts and circumstances of the case, the amendment sought by

respondents No. 3, 4 and 5 could have been allowed or not is required to be considered and adjudicated.

5. The submission of Sri Sharma, learned Counsel for the petitioner is that no amendment to the pleadings is permissible after the commencement of the trial particularly when arguments have been advanced by the plaintiff and that of the defendants are in progress. He has laid emphasis upon proviso to Rule 17 of Order VI, C.P.C. in this connection.

6. On the other hand, learned Counsel for respondents No. 3, 4 and 5 has submitted that amendment to the pleadings can be allowed at any stage more so when it is explanatory in nature and is necessary for adjudicating the real controversy between the parties.

7. Order VI, Rule 17, C.P.C. reads as under :

"17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

8. A plain reading of the above provision reveals that the Court is competent to allow pleadings to be amended at any stage but not after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of the trial.

9. In view of above, it is settled that amendment is permissible at any stage of the pleadings and that even belated applications for amendment can be allowed, if it is necessary for adjudicating the real controversy between the parties provided that it does not change the nature of the suit and does not amount to withdrawing the admission made earlier and the amendment sought is only explanatory in nature. Nonetheless amendment to the pleadings after commencement of trial is limited only in cases where the facts sought to be introduced by means of amendment could not be brought on record by the party despite due diligence. Therefore, in the present case as admittedly the trial had commenced and the arguments were in progress amendment could have been allowed unless respondents No. 3, 4 and 5 were able to establish that in spite of due diligence they were unable to raise the said facts before the commencement of the trial.

10. The application of respondents No. 3, 4 and 5 for the amendment of the written statement is Annexure 4 to the stay application. The said application only

states that they have filed the written statement earlier through a Counsel practicing on the criminal side who was not well versed with the civil law and that the facts stated in the written statement are ambiguous and not clear and therefore they require clarification for which amendment in the written statement is necessary. The amendment proposed is not likely to change the nature of the defence set up by respondents No. 3, 4 and 5 earlier and that it will not require any oral evidence.

11. There is no whisper in the above application that the facts which respondents No. 3, 4 and 5 want to add in the written statement were riot within their knowledge earlier or that they could not be brought on record despite exercise of due diligence.

12. The impugned order of the Court of first instance only records that the respondents No. 3, 4 and 5 by the proposed amendment wants to explain the denial which has been made by them in paragraph 1 of the written statement and since the case has not yet been decided there appears to be no harm in permitting the amendment in the written statement. The said amendment would not change the nature of the defence or the suit and as far as the delay in filing such an amendment application is concerned it can be compensated by way of cost.

13. In the entire order passed by the Trial Court there is no finding that the aforesaid facts could not be brought on record by respondents No. 3, 4 and 5 before the commencement of the trial despite due diligence or that they were not within their knowledge.

14. Similar is the situation with the findings of the Revisional Court. The Revisional Court also does not record any finding that the respondents No. 3, 4 and 5 were forbidden in anyway from bringing the said facts on record earlier to the commencement of the trial.

15. It is settled that the trial of the suit commences with the recording of the oral evidence of the parties.

16. Thus in view of above, in the present case as the trial had commenced and the amendment to the written statement was sought thereafter but without making out a case for such amendment as contemplated by proviso to Rule 17 of Order VI, C.P.C. it could not have been allowed.

17. Sri Arun Kumar SinghI, learned Counsel for respondents No. 3, 4 and 5 has placed reliance upon the following decisions of the Supreme Court in Surendra Kumar Sharma v. Makhan Singh, 2009 (77) ALR 466 (SC)=2009 (83) AIC 164 and Sushil Kumar Jain v. Manoj Kumar and another, 2009 (76) ALR 138 (SC)=2009 (81) AIC 212.

18. In Surendra Kumar Sharma (supra) it has been laid down that delay in itself is not sufficient to reject the amendment.

19. In *Sushil Kumar Jain (supra)* it has been reiterated that an amendment to the plaint and amendment to the written statement are not necessarily governed by exactly the same principle and the approach of the Courts in dealing with the amendment of written statement ought be liberal so as to permit amendment of written statement which is of explanatory nature.

20. There is no second opinion to the above settled principles governing amendments to the pleadings but where the amendment is sought after the commencement of trial it is obligatory upon the party to make out a cause of "due diligence" and for the Court to record finding satisfying the said rendition otherwise allowing an amendment would be contrary to the express provision of law which cannot be permitted despite most liberal approach.

21. In view of the aforesaid facts and circumstances, as no case as provided under proviso to Rule 17 of Order VI, C.P.C. has been made out, the Courts below erred in following the amendment.

22. The writ petition as such deserves to be allowed.

23. It is accordingly allowed. The impugned orders dated 5.5.2012 and 25.2.2012 are quashed and the Trial Court is directed to complete the hearing at the earliest.