
(1990) 11 AHC CK 0012
In the Allahabad High Court
Case No : Civil Revision No. 189 of 1990

Laxmi Narain Gupta and Others

APPELLANT

Vs

Maha Narain Kapoor and Others

RESPONDENT

Date of Decision : 28-11-1990

Acts Referred:

Citation : (1991) 1 AWC 195

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : Dinesh Kackker, for the Appellant; S.K. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—At the time of initial hearing of this civil revision, the Court was pleased to direct that the applicant may serve the Respondents, so that the court may have the version of the Respondents also. Sri S.K. Mehrotra has tiled his appearance before this Court and the Civil Revision has been argued on merits.

2. Heard the counsel for the parties.

3. This civil revision is directed against the order of the learned Civil Judge by which the amendment prayed by the Plaintiff was allowed in the plaint. The Plaintiff/Respondents had initially filed a suit seeking the following reliefs:

(a) A decree for declaration declaring that the sale deeds dated 19-9-83 executed by the Defendant Nos. 5 to 13 in favour of the Defendant Nos. 1 to 4 as per the details furnished herein below are void, ab-initio, ineffective, inoperative of no consequences conferring no right, title or interest in respect of any part of premises No. 47/88, Hatia Kanpur upon the Defendant Nos. 1 to 4 to the detriment of the Plaintiff, thereby consequently restraining the Defendant Nos. 1 to 4 their agents, servants, heirs, assigns, attorneys, etc. through a decree of permanent injunction from in any manner whatsoever interfering in the peaceful, use, possession and enjoyment of the said premises and/or from taking forcible

possession In any part without due process of law and/or from dispossessing the Plaintiff be passed In favour of the Plaintiff as against the Defendant Nos. 1 to 4, besides other reliefs not very material for the purpose of this revision. The plaint was filed in the court below in the year 1984. In 1989, an application for amendment was filed by which the Plaintiff prayed for amendment in the plaint by addition of the words that the sale deed dated 19-9-83 be cancelled. This amendment was allowed.

4. The counsel for the applicants submit that this amendment allowed is in effect permitting a relief of decree for cancellation, which had already become barred by limitation, secondly it is urged that the amendment changes the nature of the suit itself and lastly, the submission is that the amendment sought for is malafide. The learned court below recorded clear and categorical finding to the effect that the suit was initially filed for declaration and injunction. The declaration sought for was to the effect that the sale deed be declared as null and void, of no consequences having no binding effect on the Plaintiffs. The relief claimed has already elaborately been mentioned in the earlier part of this order. The court below records clear finding to the effect that this relief is not at all affecting the nature or changing the nature of the suit nor is permitting a cause of action which had already become barred by limitation. It is well settled that after this amendment, the Defendants shall have opportunity of filing additional written statements and additional issues may be framed. The Defendants are being compensated by cost.

5. After hearing the counsel for the parties, I am of the opinion that the court below was perfectly correct and justified in allowing the revision. By allowing the revision, the court below had taken into consideration all the necessary relevant facts and clearly held that it would not amount to changing the nature of the suit or allowing a time barred relief. It is settled law that amendment sought for are generally to be allowed unless it is malafide or suffers with impediments as pointed out above.

6. After considering the facts and circumstances of the case, I am not inclined to interfere with this revision.

7. The revision is dismissed summarily.

8. A copy of the order be given to the counsel for the parties in a week's time on payment of usual charges.