

(1984) 03 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Revision No. 466/83

Mahant Shri Mani Ram Das alias Magni Ram Das APPELLANT
Vs
Thakur Kishan Singh and Others RESPONDENT

Date of Decision : 22-03-1984

Acts Referred:

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

Citation : (1984) WLN 134

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.S. Lodha, J.—This is a plaintiff's revision against the order of the learned Munsif, Jetaran, dated 15-11-83 by which the plaintiff's application for amendment of the plaint has been rejected.

2. I have heard the learned Counsel for the parties, on the question of the admission of this revision. The learned Counsel are agreed that the revision may finally be disposed of at this stage. The record of the trial court has already been received. I have perused the same.

3. In view of the order, I am so as to make, I need not state the facts of the case at length. Suffice it to say that the plaintiff Mahant Mani Ram Das claims to be the duly appointed or installed Mahant of Gopaldwara, Jetaran being the successor of his Garu Vallabhdaji Maharaj. The defendants, according to the plaintiff, however, do not recognize him as such and are interfering with his management of the properties. The plaintiff, therefore, wants a declaration and injunction against the defendants. The prayer made in the plaint is as follows:

oknh dh izkFkZuk gS fd &

?d? okn cgd oknh fo:) izfroknhx.k fMdzH Qjek;k tkos A

?[k? ;g ?kks"k.kk dh tkos fd oknh gh Jhxksiky }kjk tSrkJ.k dk fof/k o ijEijkxr

fu;qDr o p;fur rFkk xnhlhu egUr gS o mls bl xkSiky }kjk dh leLr py o vpy IEifRr dk cgSfl;r egUr izcU/k o vkf/kiR; izkIr djus dk gd gS A

?x? oknh ds egUr in ds drZO; ikyu es izfroknhx.k Loa; ;k vius ,tsUV izfrfuf/k }kjk xksiky }kjks ds LokfEkRo dh leLr IEifRr ds izcU/k o vf/kiR; es izfroknhx.k fdlh izdkj dk n[ky u ns o lkjh IEifRr tks Hkh mlds ikl es gks dsk oknh dks lkSi ns bl izdkj dh fujUrj fu"ks/kkKk tkjh Qjek;h tk;s A

??k? vU; vuqrks"k tks fd ekeys dh ifjfLFkr;ks es fof/klaxr o U;k; laxr oknh ds Ik{k es gks} Qjek;k tkos A

?p? [kpkZ okn dk fnyk;k tkos A

4. The plaintiff in para 9 of his plaint has valued the suit for the purposes of declaration and injunction at Rs. 400/- and has paid a court fee of Rs. 30/-. When the summonses of the suit were served upon the defendants, they while filing their written statement, clearly stated that they challenged the jurisdiction of the court of the Munsif, Jetaran to entertain suit and are not submitting to it. Among other pleas, they alleged the suit related to the properties worth lacs and the plaintiff should value the suit at the market value of the properties and should also pay court fee accordingly. It was further alleged that looking to the valuation, the suit was not triable by the learned Munsif. On this, the learned trial court framed a preliminary issue about jurisdiction and fixed case for arguments. However, thereupon the learned Counsel for the plaintiff moved an application under Order 6 Rule 17 CPC for permission of the court to amend the plaint. By this application, the plaintiff wanted to make amendments in paras 6, 9 and 10 of the plaint. The defendants objected to this application. While the Court was hearing the application under Order 6 Rule 17 CPC the plaintiff's learned Counsel moved still another application for further amendments. After considering the matter, learned Munsif refused the amendments prayed for by the plaintiff on the grounds that it does not think it proper to advert at present. It is against this order of the learned Munsif dated 15-11-83 that the present appeal has been filed.

5. During the course of arguments of this revision, the learned Counsel for the plaintiff-petitioner wanted to delete certain paras of the application for amendment moved by him before the trial court. He was asked to give in writing what paras of the application he wants to delete and on what para or paras he wants to urge before this Court. Today the learned Counsel has moved an application in this respect indicating that the amendments that he now wants to make are as follows:

(1) Para No. 6 at Page 6 may be read as para 6(A).

(ii) The following lines may be added in para 8 of the plaint.

ftl xksiky}kjs ds egUr in ckcr bLrdjkj gd o fu"ks/kkKk pkgh tk jgh gS og xksiky}kjk dLcs "kgj tSrkJ.k es fLFkr gksus ls ,oa tSrkJ.k bl U;k;ky; ds {ks=kf/kdkj es gksus ls ;g nkok gkth bl U;k;ky; okyk dsk lquus dk vf/kdkj {ks= izkIr gS A

(iii) In para No. 10 (C) the following lines may be allowed to be.

o lkjh lEifRr tks Hkh muds ikl es gsk oks oknh dks lkSi ns A

and the following lines may be allowed to be inserted in para 10 (C).

rFkk oknhx.k Loa; vFkok fdLh lKFkh;ks ds lg;ksx ls izfroknH la0 7 dks ;g vU; fdLh O;fDr dks dHkh Hkh bl oknxzLr egUr in dh xn~nh ij u rks cSBkos u bldk dksbZ dk;Z lEHkkys A oknh dks vius dk;Z lapkyu djus RkFkk lsok iwtk o izcU/kkf/kdkj es n[ky u ns A

In the earlier part of the application, he has mentioned those paras of the earlier applications for amendment made before the trial court which he does not now want to press. Therefore, the only amendments now sought to be made are as indicated in para 2 of the application filed today which have been reproduced above.

6. It is urged by the learned Counsel for the petitioner that as matter of fact the suit as filed by the plaintiff was only for declaration and injunction as has been mentioned in the heading of the suit as also in para 7 of the plaint. It would be further clear, according to the learned Counsel for the valuation and court fees mentioned in para 9 of the plaint where the suit has only been valued for the purposes of declaration and injunction and court fee had been paid for these, reliefs. It is further contended that on account of inadvertence, relief has also asked for the possession of certain properties in para 10(C) of the plaint. He, therefore, wants to delete this prayer for Possession. It was further pointed out by him that the details of the properties of which possession was sought, have not been given in the plaint nor any valuation of these properties have been mentioned and from this, it would be clear that as a matter of fact, the suit was not for possession of these properties but was merely for declaration and injunction and, therefore, the amendment for deleting the prayer for possession was only a formal amendment and it should have been allowed by the court below. According to him the other amendments are either for correction of clerical mistake or merely consequential to the main prayer for amendment as indicated above. He therefore prayed that the order of the trial court may be set aside and the amendments as prayed, may be allowed. The learned Counsel for the non-petitioners, on the other hand, vehemently urged that these amendments and Specially amendment in para 10(C) of the plaint cannot be said to be merely formal or innocuous. According to him, the plaintiff has asked for declaration of the Mahantship of the plaintiff in respect of the Gopaldwara and in the conception of Mahantship, both the elements of office and properties are blended together and neither can be detached from the other. The suit, therefore also relates to the declaration of the Plaintiff's right to the properties of this Gopaldwara, which according to him, as mentioned in para 6 of the plaint are worth lacs and, therefore, the suit even for declaration and injunction is not triable by the learned Munsif. When the suit is not triable by the learned Munsif, the learned Munsif, has no jurisdiction to allow any amendment in the plaint and

in this respect, he has relied upon certain authorities. On the other hand, the learned Counsel for the petitioner in rejoinder urged that a plaintiff is free to give up any prayer in his suit in order to bring it within the jurisdiction of the court and specially when different reliefs are asked for, there is no bar against his deleting one or the other of them in order to bring the suit within the jurisdiction of the court.

7. I have given my careful consideration to the rival contention. In my opinion, before the question of amendment can properly be considered, the basic question which ought to have been determined by the learned the suit as such was not triable by him even for the reliefs of declaration and injunction as is the plaintiff's case, he would have no jurisdiction to allow any amendment and if the suit for declaration and injunction is found to be triable by the learned Munsif, then he can consider the question of amendments prayed for by the plaintiff. Without deciding that question, the disposal of the application for amendment the learned Musif was not proper and cannot be maintained.

8. I, therefore, allow this revision and set aside the order of the learned Munsif, The matter will go back to him for first deciding the question of jurisdiction and thereafter if necessary the question of amendment. It may, of course, be made clear that if the learned Munsif comes to the conclusion that the suit for declaration and injunction as framed by the plaintiff is triable by him, he may consider the question of amendment prayed for by the plaintiff but if he comes to the conclusion that the suit as framed was not at all triable by him, then the question of consideration of the amendment would not arise. In the circumstances of the case, the parties are left to bear their own costs. The parties are directed to appear before the learned Munsif on 16-4-84. The record may be sent immediately.