

(2015) 12 KAR CK 0195

In the Karnataka High Court

Case No : Writ Petition No. 112592/2015 (GM-CPC)

Malan Ganpat Gurav

APPELLANT

Vs

Annapurna Arun Sambrekar

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

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

Citation : (2016) 1 KCCR 524

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : G.B. Naik and P.G. Naik, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Aggrieved by the order dated 09.09.2015, passed by the II Addl. District Judge, Belagavi, whereby the learned Judge has rejected the petitioner's application under Order VI Rule 17 CPC, for amending the plaint, the petitioner has approached this Court.

2. Briefly the facts of the case are that on 29.03.2004, the petitioner had instituted a civil suit for declaration and injunction against the respondent. In the civil suit, the petitioner has prayed that the sale deed dated 29.01.2002, entered between Smt. Surekha Vasant Sambrekar and defendant No. 2, should be declared as void ab initio. Consequently, the petitioner had also sought the relief of injunction.

3. The defendants had submitted their written statements; while defendant No. 1 denied the averments made in the plaint, the defendant Nos. 2 to 5 supported the case of the plaintiff. However, by the judgment and decree date 03.04.2008, the learned trial Court dismissed the civil suit.

4. Since the petitioner was aggrieved by the judgment and decree dated 03.04.2008, she filed a Regular Appeal before the II Addl. District Judge, Belagavi, in 2008. Subsequently, on 17.03.2011, the petitioner moved an

application under Order VI Rule 17 CPC. The said application was allowed by order dated 23.05.2011. However, as the respondent was aggrieved by the order dated 23.05.2011, she filed a writ petition, namely W.P. No. 66793/2011, before this Court. By order dated 07.02.2014, this Court remanded the case back to the First Appellate Court and directed the First Appellate Court to reconsider the application filed by the petitioner for wanting to amend the plaint. Subsequently, the respondent also filed her objections to the said application. By order dated 09.09.2015, the said application has been dismissed by the II Addl. District Judge. Hence this petition before this Court.

5. Relying on the cases of North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by L.Rs.(2008 AIR SCW 3159) and Chander Kanta Bansal Vs. Rajinder Singh Anand, , the learned counsel for the petitioner has pleaded that the application for amending the plaint can be moved even before the First Appellate Court. While dealing with the application for amendment, the Courts are expected to be liberal in their approach, rather than being hyper-technical. In case the amendment would not lead to injustice to the other party, and in case the amendment is essential for determining the question in controversy, then amendment application should have been allowed. According to the learned counsel, these principles have been ignored by the learned Judge.

6. Secondly, relying on the case of Usha Devi Vs. Rijwan Ahamd and Others, , the learned counsel has pleaded that the merit of the amendment is hardly a relevant consideration. It would be open to the respondent to file her objection to the amended plaint. Therefore, the approach of the leaned Judge is legally untenable.

7. Heard the learned counsel for the petitioner and perused the impugned order.

8. A bare perusal of the impugned order clearly reveals that initially the petitioner had filed a civil suit for declaration and for injunction. However, through the amendment application, the petitioner wishes to insert a new relief, i.e., to declare the petitioner as the absolute owner and in possession of the suit schedule property, by virtue of the registered sale deed dated 29.01.2002, in respect of the suit schedule property, and for the grant of permanent injunction against the defendant No. 1.

9. While dealing with an application for amendment, the Court has to be alive to various circumstances: firstly, according to the proviso added to Order VI Rule 17 CPC, an amendment can be permitted after the commencement of the trial, if and only if, the party can convince the Court that the new facts could not be discovered by the party even after exercising due diligence. The word "due diligence" mean "such diligence as a prudent man would exercise in conduct of his own affairs". Therefore, the Court has to consider, whether the party has exercised such diligence, as a prudent man would have so exercised in the conduct of his own affairs or not.

10. The principle laid down by the Hon"ble Supreme Court in the cases of

Chander Kanta Bansal and in the case of North Eastern Railway Administration (supra), cannot be doubted. In the former case, the Hon"ble Supreme Court has clearly opined that "the liberal principles, which guide the exercise of discretion in allowing the amendment, are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while the Court should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment". Similarly, in the latter case, the Apex Court has opined that "the amendment should be permitted even at the appellate stage, provided the amendment does not work injustice to the other party and is necessary for determination of the question in controversy".

11. Keeping these principles in mind, the moot questions before this Court are;

"i. Whether the petitioner had exercised due diligence during the course of the trial and during the pendency of the first appeal or not?

ii. Whether the proposed amendment would change the nature of the suit or not?

iii. Whether the amendment is necessary for determination of question in controversy or not?"

12. Admittedly, the suit was filed on 29.03.2004. The suit was undoubtedly for declaration and for injunction. The suit was pending before the learned trial Court from 2004 to 2008. During these four long years, the petitioner did not make any attempt to amend the plaint. Since there is no discovery of new fact by the petitioner, her silence for four long years for wanting to amend the plaint is inexplicable. Even after filing the First Appeal in the year 2008, no application was filed by her for amending the plaint till 2011. Therefore, her silence for further period of three years is rather enigmatic. It is only after the lapse of seven years that one fine morning, the petitioner seeks amendment in the plaint, and seeks to add a new dimension to the entire civil suit. The laxity on the part of the petitioner hardly proves a course of "due diligence" in her own affairs. Therefore, the proposed amendment is certainly hit by the proviso contained in Order VI Rule 17 CPC. Thus, the said amendment could not have been allowed in the light of the proviso.

13. To permit the petitioner to introduce a fresh relief, that too a relief of declaration and for permanent injunction, would obviously change the very nature of the suit. Moreover, the proposed amendment would require fresh written statement to be submitted, fresh issues to be framed and fresh evidence to be produced, on both sides. Such a course would certainly embroil the defendant for years into litigation. Thus, it would work injustice to the defendant. The relief prayed for by way of amendment could have been thought of by the petitioner, even while filing the original plaint. Since the proposed amendment would cause injustice to the defendant, the amendment can not be allowed.

14. The proposed amendment will not shed any light on the questions, which

were already raised before the learned trial Court and have been answered by the learned trial Court. Thus, the proposed amendment would not throw a new light on the issues, which were raised earlier. In fact, it would only complicate the entire issues, which were raised and answered by the trial Court after assessing the evidence produced before it. The issue before the First Appellate Court is with regard to the legality or illegality of the finding given by the learned trial Court. Therefore, even the proposed amendment would not shed any light on the controversy pending before the First Appellate Court.

15. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This Court also does not find any merit in the present petition. Hence, the petition, is hereby dismissed.