
(2006) 02 AHC CK 0243
In the Allahabad High Court
Case No : C.M.W.P. No. 8398 of 2006

Prabhu Niwas alias Kapil Deo and Another	APPELLANT
Vs	
Laxmi Narain and Others	RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

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

Citation : (2006) 3 AWC 2534 : (2006) 1 RD 641

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : S.P. Shukla and S.K. Tiwari, for the Appellant; P.N. Tripathi and A.K. Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard learned Counsel for the parties.

2. This petition has been directed against the order of appellate court dated 25.1.2006 whereby petitioners' application for amendment under Order VI, Rule 17, C.P.C. has been rejected.

3. The petitioners have filed a suit for permanent injunction and cancellation of sale deed in respect of certain property against the respondent-defendants. The property in question was said to have been transferred by Smt. Gyanmati, the respondent No. 3 to respondent Nos. 1 and 2 through impugned sale deed. The petitioners have tried to demonstrate in their pleadings that Smt. Gyanmati had no right to transfer that property and after the death of her earlier husband-Teerath, she had remarried one Ram Nayan. In order to substantiate this pleading further certain facts are said to be added by way of an amendment stating that Shyampati a daughter was born to the respondent No. 3-Smt. Gyanmati in the year 1965 out of her marital association with the said Ram Nayan. This fact was definitely within the knowledge of plaintiff right from inception of the suit itself and on that reason and logic only the court below has

dismissed the prayer for amendment, which has been brought after the suit had been decided by the trial court and the appeal was pending disposal. If a particular fact substantiating the case taken by a party, was within its knowledge from the very beginning, it should be pleaded much before commencement of trial of the suit itself. The proviso to Order VI, Rule 17 C.P.C. has been added by Amending Act 22 of 2002 whereby the right for bringing amendment in the pleadings has been restricted to certain extent and it has been specifically 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. In the present case this fact was within the knowledge of the plaintiff and if such prayer for amendment in pleadings has been made after 20 years of filing of the suit, the same has rightly been rejected by the Court below.

4. I do not find any justification for interference against that order under extraordinary jurisdiction of this Court in writ petition. The petition having no force is hereby dismissed.