
(2001) 07 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 21506 of 1987

Prabhunath Dixit

APPELLANT

Vs

IIIrd Addl. District Judge, Deoria and others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Citation : AIR 2001 All 355 : (2001) 3 AWC 2362(1) : (2001) 92 RD 722

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

Bench : Single Bench

Advocate : O.P. Misra and Ramesh Chandra, for the Appellant; H.S.N. Tripathi and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, the petitioner has challenged the judgment of IIIrd Additional District Judge. Deoria (now known district Kushinagar). By the judgment impugned in this writ petition, the amendment application which was filed in appeal was allowed.

2. The fact for the purposes of decision can be summarised as under ;

The petitioner filed a suit for injunction restraining defendants from raising any construction over the land in dispute and thereafter by way of amendment, relief for removal of the construction was also claimed. After filing the written statement and completion of evidence, the trial court decreed plaintiffs suit against which the defendant preferred appeal. During the pendency of the appeal, application for amendment was moved by the defendant-appellants (45 Ka) by which various facts/pleas were sought to be added. Besides the other amendments, the fact that the defendant on account of their continuous peaceful possession acquired right by -adverse possession was also sought to be added."

3. The appellate court after considering the fact and submission as was advanced from both the sides specifically rejected the inclusion/ amendment of the facts/ pleas in respect to acquisition of rights by adverse possession. The other part of

the amendment to which there is no dispute at present was allowed by its order dated 18.8.1984. It appears that after about two years, another amendment application was filed by the appellants by which again same plea of acquisition of right by adverse possession was sought to be added. This time the appellate court allowed the amendment by its judgment dated 3.9.1987 against which the present writ petition has been filed.

4. Heard learned counsel Sri Ramcsh Chandra on behalf of the petitioner and Sri H. S. N. Tripathi who has appeared on behalf of the respondents.

5. It has been submitted by the learned counsel for the petitioner that allowing of the amendment by the appellate court, by the impugned judgment is clearly erroneous as the exercise as was made by the appellate court was clearly barred by the principles of res judicata. It has been submitted by the learned counsel that as at the earlier occasion, the appellate court himself has rejected this very plea which was sought to be added by way of present amendment and, therefore, in respect to the same facts and the pleadings, no contrary order could have been passed by the court below. It has also been submitted that on account of the amendment which has been allowed it will amount a permission to set up the new case by the defendants which may lead to fresh trial which will cause serious prejudice to the petitioner.

6. Learned counsel who has appeared on behalf of the respondents has submitted that the appellate court was fully justified in allowing the amendment, which can be done at any stage. It has been submitted that nature of the case has not been changed and in fact the amendment as was sought was explanatory in nature and there was nothing new therein and therefore, no interference is required by this Court.

7. Perusal of the order as was passed by the appellate court on 18.8.1984 as well as the first amendment as was filed by the appellants makes it clear that defendant-appellants by means of the amendment had tried to incorporate the plea of acquisition of their rights by remaining in adverse possession for more than 40 years. The appellate court at first instance on a consideration of the submission from both sides has chosen to reject the same by giving findings that by allowing the amendment, it will amount permission to withdraw the admission as was made by the defendants and also it will amount to add a new case. This order of the appellate court dated 18.8.1984 became final. It is in respect to the same plea as was taken earlier about acquisition of the title by adverse possession, the present amendment was moved which came to be allowed by the judgment impugned in this writ petition.

8. It has been held by the Hon"ble Apex Court in Satyadhan v. Smt. Deoraji Devi AIR 1960 SC 941, that principle of res Judicata applies also in between two stages in the same litigation to the extent that the Court whether trial court or higher Court, having at an earlier stage decided the matter in one way, will not allow the parties to re-agitate the matter again at the subsequent stage in the

same proceedings.

9. Following the aforesaid decision of the Hon''ble Apex Court principle in this respect has been explained in a decision given by this Court in Mannu v. Board of Revenue and others 1974 RD 233.

10. In Hukam Singh v. Presiding Officer, Muzaffarnagar 1980 AWC 631 a Bench of this Court has laid down that doctrine of res judicata has been very broadly applied and its applications have been extended even to miscellaneous proceedings and order passed at different stages In the same litigation or even when one proceeding was a suit and the other was not a suit.

11. Analysis of the above mentioned judgments makes it clear that Court has no jurisdiction to re-examine the matter about the same issue which was already decided in one way in the same proceeding. If this exercise is permitted, then, there will be no end and the process of finality may not come in respect to any issue. Otherwise also as the same facts/pleadings which were sought to be added were not permitted by the order of the court below on a consideration of the entire facts and arguments from both sides, passing of the subsequent order taking contrary view will also amount to review of the matter which also is not permissible.

12. There is another aspect of the matter that the appellate court at first instance while rejecting the amendment vide its judgment dated 18.8.1984 has given various reasons which too has not been taken into account and although it has been observed in the judgment impugned in this writ petition that this amendment which is being sought could have been prayed vide earlier amendment application (45-Ka) which was not done but without assigning any reason, the order was passed. In fact, the appellate court appears to have not taken care to examine the earlier amendment application and even the order as was passed thereupon as by the earlier amendment application, same plea was specifically taken and was considered and was specifically dealt by the Court and was rejected and, therefore, allowing of the same plea by subsequent judgment was not at all called for.

13. In view of the aforesaid analysis the judgment of the IIIrd Additional District Judge, Deoria which is now district Kushinagar, cannot be sustained, and therefore, the writ petition is hereby allowed and the judgment impugned in this petition is quashed. The appellate court is directed to proceed with the disposal of the appeal with all promptness.

14. Parties will bear their own costs.