
(1999) 04 PAT CK 0022
In the Patna High Court
Case No : C.R. No. 1312 of 1998

Puran Chand @ Puran Chand Sultania	APPELLANT
Vs	
Sajjan Kumar and Others	RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Citation : (1999) 04 PAT CK 0022

Final Decision : Allowed

Judgement

P.K. Deb, J.—This revision petition has been preferred against the order dated 6.6.1998, passed by the Subordinate Judge, 1st Gaya in Title Suit No. 179/94 in Title No. 179/94 by which the prayer for amendment of the plaint filed by the Plaintiff-Petitioner has been rejected holding that if the amendment is allowed the nature of the suit will be changed. The ancestors of the Plaintiff and the Defendants comprised of joint family and they have their respective shares in the joint family property. It is the contention of the Plaintiff that prior to the year 1942-43, the holding No. 39 in Mohalla Purani Godown was amicably possessed separately by the Plaintiff and the Defendants. It was also contended that on such amicable partition, the Plaintiff and Defendants' predecessor have got separate mutation in the municipal records, but the Defendants were trying to interfere and creating disturbance in the possession of the Plaintiff and as such the Title suit No. 179/94 was filed. The reliefs claimed were:

(i) A declaration that the Plaintiff has valid and legal right to enjoy the portion of the suit premises, which devolved on him.

(2) For a decree of permanent injunction restraining the Defendants from interfering in peaceful possession.

2. In the suit a prayer for temporary injunction was made and an order of status-quo was passed by way of an adinterim measure, but the Defendants violating the orders of the court, dispossessed the Plaintiff unlawfully with the help of local Gundas and henchman and as such the Plaintiff filed a petition for violation of the

injunction, which was registered as Misc. Case No. 19 of 1994 but the said violation case cannot be proceeded with by the Plaintiff because of the threatening and dire consequences by the Defendants and their henchman. As the Plaintiff was dispossessed then he came up with this amendment petition for inclusion of the submissions in the plaint as to how he has been dispossessed during the pendency of the suit and also for inclusion of a further relief in the plaint for recovery of possession. The said prayer for amendment has been objected to from the defence side on the ground that such amendment would totally change the nature of the suit. By way of an amendment, the Plaintiff has also prayed for allowing him to pay advalorem court fee on the valuation of the suit premises and which he accordingly paid earlier to the order.

3. After hearing the counsel for the parties, the learned court below rejected the prayer holding that the nature of the suit would be changed as there was no prayer for recovery of possession in the original suit and that the cause of action would also be changed as these are the subsequent events.

4. It appears that the learned court below approached the matter in a wrong angle. In a pending suit, if subsequent event arises regarding the suit land and between the parties, the same is always allowed to be included in the plaint for curtailment of multiplicity of suits, but in such situation, the mind should be applied that the same amendment cannot in any way take away or infringe any right already accrued to the adverse party.

5. In the present case, the suit was for declaration and also for permanent injunction. During the pendency of the suit, because of subsequent event, the Plaintiff has been dispossessed and as such he has prayed for recovery of possession and for which when consequential relief has been prayed, advalorem court fee has also been paid. This is the normal circumstances, where the amendments are always being allowed. Learned court below has wrongly observed that such amendment will change the nature of the suit. Cause of action regarding the recovery of possession may have arisen during the pendency of the suit, but that does not mean that the whole cause of action for the suit has been changed because the cause of action is nothing, but bundle of facts for which a person has grievances to come to a court of law for redressal.

6. Learned Counsel appearing for and on behalf of the opposite parties has taken the objection that when the violation of injunction matter had not been proceeded with by the Plaintiff, then subsequently such amendment cannot be allowed in the plaint or pleadings as contemplated under Order VI Rule 17. CPC. The whole contention of the learned Counsel is misconceived. Violation of injunction as contemplated under Order 39 Rule 34 CPC is a matter for punishment for a party who has violated the court's order and the aggrieved party has got the option by filing a petition to bring it to the notice of the court. The violation matter is in between the court and the party, who has allegedly violated the court's order that has nothing to do with the pleadings of the suit. Even if no violation is there, then also the subsequent event of the recovery of

possession because of the dispossession can be claimed legally by the Plaintiff. The Apex Court's judgment as reported in M/s. Upadhyay and Co. Vs. State of U.P. and Others, has been submitted from the side of the opposite parties which has got no bearing in the present circumstances, when there was no withdraw of suit and fresh filing of any suit. Fresh filing of a suit is barred when withdrawal has been made without grant of a liberty as has been observed by the Apex Court in the above mentioned ruling. Similarly Heeralal Vs. Kalyan Mal and Others, has also got no application, as the Plaintiff is not going to withdraw any admission made earlier in the plaint. State of Bihar Vs. Ramgarh Farms and Industries Ltd. and Others, has also got no application, as new assertion is not changing the nature of the entire suit. Even in a suit for confirmation of possession or for declaration, if proper court fee is paid then the court has got power and jurisdiction to grant equitable relief of recovery of possession under Order-VII Rule 7 CPC even if no specific prayer is there.

7. Considering all aspects of the matter I find that the learned court below has committed error of law in rejecting the amendment petition filed on behalf of the Plaintiff Petitioner. Hence the revision petition is allowed, the impugned order is hereby set aside and the court below is hereby directed to allow the amendment and/or corporate the same in the plaint.