
(2015) 01 KAR CK 0423

In the Karnataka High Court

Case No : Writ Petition No. 15710/2013 (GM-CPC)

Puttashetty and Others

APPELLANT

Vs

Manja Shetty

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

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

Citation : (2015) 01 KAR CK 0423

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Pavana Chandra Shetty and S. Naveen Kumar, for the Appellant; K.L. Sreenivasa, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Defendants 1 to 4 in O.S. No. 222/2002, on the file of the Civil Judge (Sr. Dn.), Holenarasipura aggrieved by the order dated 17.1.2013 allowing I.A. No. 21 under Order 6 Rule 17 of CPC filed by the plaintiff to amend the plaint, have presented this petition.

2. In the suit for declaration of title, to immovable property, instituted by the respondent, a surveyor when appointed, submitted a report pointing that petitioners encroached upon a portion of the suit schedule properties. The plaintiff asserted that it was on the report of the surveyor that it came to his knowledge over the encroachment by the defendants, filed I.A. No. 21 under Order 6 Rule 17 of CPC to amend the plaint and an additional prayer for possession of the encroached portion of the property. That application was opposed by filing statement of objections inter alia contending, that, since the stage of the suit was for recording evidence the proviso to order 6 Rule 17 applies, denying plaintiff the relief of amendment of the plaint. In addition, it was contended that the amendment would bring in a fresh of cause of action and the relief of possession changes the nature of the suit and on that score too, the plaintiff must be denied the benefit of amendment of the plaint.

3. The trial Court having regard to the pleadings of the parties, accepted the plea of the plaintiff that allowing the application and permitting amendment would avoid multiplicity of proceedings, while, the defendant would have every right to file additional statement and adduce evidence, and that, the additional relief for possession of the encroached portion of the property does not change the nature of the suit or cause of action. The trial Court followed the reported opinions, observing, that alternative relief of possession and ejectment of trespassers are not inconsistent with the original pleading, if sought, by way of amendment and that such amendment, would not cause prejudice to the defendant. The trial Court also noticed that in *Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others*, , it was held that after commencement of trial and examination of witness, amendment cannot be permitted to introduce new and totally inconsistent case. In the facts and circumstances of the case on hand, the trial Court held that the observations in *Ajendraprasadji*, *supra*, has no applicability and accordingly, by the order impugned, allowed I.A. No. 21.

4. Learned counsel for petitioners reiterates the very same contentions as were advanced before the court below, however, learned counsel is unable to point out to any legal infirmity occasioning grave injustice to the petitioners by the order impugned. Since no new case is introduced or totally inconsistent case made out by the amendment to the plaint, the decision in *Ajendraprasadji*'s case does not apply and the court below was fully justified in allowing I.A. No. 21.

Petition is devoid of merit and rejected.