
(2013) 05 AHC CK 0051
In the Allahabad High Court
Case No : C.R. No. 250 of 2011

Radha Krishanji Maharaj Virajman Mandir Thakur Dwara Trust and Another APPELLANT

Vs

Ramanand and Another RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : (2013) 99 ALR 756 : (2013) 120 RD 676

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Ravi Agarwal, for the Appellant; A.D. Prabhakar, Ashok Kumar Tripathi and Mrs. Tabassum Hashimi, for the Respondent

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties. This revision has been filed by the plaintiff of the Original Suit No. 229 of 2001, Mandir Thakur Dwara Radha Krishna Pilkhua district Ghaziabad and another v. Sri Ram Nand and others and is directed against the order dated 21.7.2008 passed by the Trial Court/Civil Judge (Senior Division), Hapur rejecting the plaintiffs' amendment application.

2. Initially in the plaint, relief for permanent prohibitory injunction and for eviction of defendant-appellant No. 1 through mandatory injunction was sought. Defendants filed written statement and raised the dispute of valuation. Ultimately, the Trial Court determined the market value of the property in dispute to be Rs. 21,61,000/-. Requisite Court fee was directed to be paid. Thereafter, plaintiff filed application seeking amendment in the plaint. The amendment application was allowed on 16.3.2007 and relief 17-B (for eviction) was deleted. In the plaint, relief for declaration of sale-deed dated 17.6.2003 executed by Rama Nand in favour of defendant No. 2 was also sought. Thereafter, another amendment application was filed seeking reincorporation of the relief of possession. The second amendment application was rejected through impugned order.

3. The reason given in the second amendment application was that the earlier Counsel had advised the applicant-plaintiffs that relief for possession might be sought subsequently also after declaration, however, after change of the Counsel, the new Counsel advised that possession could not be asked for the subsequent suit as it would be barred by Order II, Rule 2, C.P.C.
4. The second amendment application was numbered as paper No. 187-Ga. The first amendment application was numbered as paper No. 165-Ka.
5. The Court below placed reliance upon Order XXIII, Rule 1, C.P.C. which is to the effect that if part of the relief has been given up then no subsequent suit for the said relief can be filed unless permission has been sought while giving up the part of relief earlier. The Court below also held that principle or res judicata applied to different stages of the suit. The Court below further held that after allowing of the first amendment application, plaintiff had filed application for temporary injunction, which was rejected on 13.9.2007 and the matter was sub-judice in the High Court and while passing the order dated 13.9.2007, it was specifically noticed that relief for possession had been got deleted.
6. In my opinion, question of res judicata was not at all involved. Valuation had been determined by the Court as Rs. 21.61 lacs. Plaintiff was not seeking fresh order in respect of valuation.
7. The principle of Order XXIII, C.P.C. applies to two different suits and not on different stages of the suit.
8. Even though it was strange that first relief of possession was got deleted and then it was sought to be reintroduced, however, under the law, there is no absolute prohibition against that plaintiff could be saddled with heavy cost for this See Saw approach.
9. Accordingly, revision is allowed. The impugned order is set aside. Amendment of the plaintiff is allowed on payment of Rs. 25,000/- cost. Both the parties are directed to appear before the Court below on 15.7.2013. On the said date cost of Rs. 25,000/- shall be deposited in the form of a draft drawn in the name of both the defendants in equal share and amendment shall be incorporated in the plaint. On the same date requisite Court fee on Rs. 21,61,000/- shall also be paid. In case, cost is not paid or requisite Court fee pursuant to the amendment of the possession is not paid, the revision shall be deemed to have been dismissed.