

(2014) 01 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 21570/2013

Ramo and Others

APPELLANT

Vs

Additional Civil Judge (Senior Division) and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 01 RAJ CK 0008

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Rahul Kamwar, Advocates for the Appellant; N.C. Sharma, Advocates for the Respondent

Judgement

Bela M. Trivedi, J.—The present writ petition filed under Articles 226 & 227 of the Constitution of India is directed against the order dated 21.11.2013 passed by the Civil Judge (Senior Division) Kumher, Bharatpur (hereinafter referred to as "the trial court") in Civil Suit No. 351/2011, whereby the trial court has dismissed the application of the petitioners-defendants seeking amendment in the written statement under Order VI Rule 17 of CPC.

2. In the instant case, it appears that the petitioners-defendants and the respondent No. 2 are the sisters, and the respondent No. 2-plaintiff has filed the suit seeking declaration and injunction in respect of the suit properties against the petitioners-defendants, on the basis of a will executed by her father in her favour on 24.01.2007. In the said suit, the petitioners-defendants had filed the written statement, challenging the validity of the will and praying for the dismissal of the suit. The trial court after framing the issues from the pleadings of the parties, had proceeded further with the recording of evidence. It appears that after the evidence of the respondent-plaintiff was concluded, the trial court had granted time to the petitioners-defendants to lead their evidence, however the petitioners instead of producing the witnesses, had submitted an application

under Order VI Rule 17 seeking amendment in the written statement. The said application has been dismissed by the trial court vide the impugned order.

3. It has been sought to be submitted by the learned counsel Mr. Rahul Kamwar for the petitioners that the petitioners-defendants had already taken up the contention with regard to the validity of the will, in the written statement, however the said contention was required to be explained, and therefore, the amendment was proposed. He has submitted that by permitting the proposed amendment, the nature of defense was not going to be changed nor the case of the respondent-plaintiff was to be prejudiced, and on the contrary the proposed amendment is necessary for the purpose of determining the real controversy between the parties. Placing heavy reliance on the various judgments of the Apex Court more particularly in case of Abdul Rehman and Another Vs. Mohd. Ruldu and Others, , Mr. Rahul Kamwar for the petitioners, submitted that though factual matrix as regards the will was already on record, the amendment was required to be granted taking the liberal view in the matter. He also submitted that the application seeking amendment should not be disallowed merely because the same was filed after the commencement of the trial court. He has also relied upon the decisions of Apex Court in case of Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, and in case of Dondapati Narayan Reddy Vs. Duggirddey Venkatanarayana Reddy and Others, . However, the learned counsel Mr. N.C. Sharma, for the respondent-plaintiff submitted that the trial court has rightly dismissed the application of the petitioners-defendants considering the proviso to Order VI Rule 17 of CPC.

4. Before adverting to the contentions raised by the learned counsel for the petitioners, it would be necessary to reproduce the provision for the amendment of pleading contained in Order VI Rule 17 of CPC, which reads as under:--

"17. Amendment of pleadings.--The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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."

5. In the instant case, it is not disputed that the amendment is sought by the petitioners-defendants in the written-statement after the commencement of the trial i.e. after the evidence of the plaintiff was already concluded. Hence, in view of the proviso to Order VI Rule 17, it was incumbent on the part of the petitioners-defendants to establish that in spite of due diligence, they could not have raised the matter to be amended before the commencement of trial. The petitioners have failed to point out as to how they could not have incorporated

the proposed amendment in the written statement, prior to commencement of the trial. Under the circumstances, the trial court has rightly rejected the application of the petitioners seeking amendment in the written statement, without complying with the proviso to Order VI Rule 17 of CPC.

6. There cannot be any disagreement with the ratio of the decisions of the Apex Court relied upon by the learned counsel for the petitioners, that the parties to the suit could be permitted to amend the pleadings at any stage of the proceedings for the purpose of determining the real question of controversy between them, and the courts should be liberal in accepting the same, if the same is made prior to the commencement of the trial. However, as held by the Apex Court in *Abdul Rehman v. Mohd. Ruldu* (supra), if such application is made after the commencement of trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In the instant case, the order passed by the trial court being just and proper, this Court is not inclined to interfere with the same, exercising limited jurisdiction under Article 227 of the Constitution of India. Even otherwise, according to the petitioners-defendants, the contention already taken up in the written statement was to be elaborated by way of the proposed amendment, and therefore, no prejudice is likely to be caused to the petitioners, if such an amendment is not permitted.

7. In that view of the matter, the petition being devoid of merits, is dismissed.