

(2015) 02 KAR CK 0348

In the Karnataka High Court

Case No : Writ Petition No. 2665 of 2015 (GM - CPC)

Rudrappa and Others

APPELLANT

Vs

Kasthuriba Kanya Vidyalaya (R)

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17

Citation : (2015) 02 KAR CK 0348

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Girish S. Hegde, for the Appellant

Final Decision : Dismissed

Judgement

B. Manohar, J.—Petitioners are defendants in OS No. 255/2011 on the file of the Additional Civil Judge and JMFC, Arasikere. Being aggrieved by the order dated 13.11.2014 allowing I.A. No. 3 filed under Order 6 Rule 17 of CPC seeking permission to carryout amendment to the plaint, this writ petition has been filed.

2. Respondent herein filed the suit seeking for declaration, declaring that they are the absolute owners of the suit schedule property and permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule properties and for other reliefs. The respondent/Vidyalaya also filed I.A. No. 1 under Order 39 Rules 1 and 2 of CPC seeking for temporary injunction. The Trial Court by its order dated 26.10.2011 rejected I.A. No. 1. Being aggrieved by the said order, the respondent filed MA No. 18/2011 on the file of the Senior Civil Judge and JMFC, Arsikre. The said appeal was also dismissed by the lower Appellate Court on 11.1.2012. Thereafter, the respondent filed I.A. No. 3 under Order 6 Rule 17 of CPC seeking for amendment to the plaint contending that after rejection of I.A. No. 1 seeking for temporary injunction, the defendants have illegally encroached 10 guntas of land in Sy. No. 251/P1. The respondent herein wanted to amend the plaint by incorporating the prayer seeking for possession of 10 guntas of land. The defendants filed

objections to I.A. No. 3 contending that the application filed by the plaintiff seeking for amendment to the plaint is not acceptable, long after commencement of trial and it will change the cause of action and nature of suit. The suit for injunction cannot be converted into for possession and sought for dismissal of the said application.

3. The Trial Court after examining the matter in detail found that initially the suit was filed for bare injunction. Subsequently after rejection of the interim prayer, it is alleged that the defendants have encroached 10 guntas of land and built a hut therein. An application was filed prior to the commencement of trial. Order 6 Rule 17 of CPC provides for the same and accordingly, I.A. No. 3 has been allowed. Being aggrieved by the said order, the above writ petition has been filed.

4. I have carefully considered the arguments addressed by the learned Advocate appearing for the petitioners and perused the orders impugned and other relevant records.

5. The records clearly disclose that during the pendency of the suit seeking for declaration and permanent injunction, I.A. No. 3 was filed seeking for amendment to the plaint contending that after rejection of I.A. No. 1 seeking for temporary injunction, the defendants have encroached 10 guntas of land and built a hut therein. Hence, the plaintiff sought for possession of the suit schedule properties. The said application was objected by the defendants contending that the same was filed after 2 1/2 years and that will change the nature of suit and cause of action and the plaintiff cannot be permitted to amend the plaint. It was further contended that they have been in possession of the suit schedule properties for more than 40 years and not encroached the said land subsequent to the rejection of the interim prayer.

6. Order 6 Rule 17 of CPC contemplates that the Court may at any stage of the proceedings allow either party to alter or amend the 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. Proviso to the said Rule contemplates 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 issue before the commencement of trial. In the instant case, the specific case pleaded by the plaintiff is that subsequent to the dismissal of I.A. No. 1 seeking for temporary injunction, the defendants have encroached 10 guntas of land and built a hut therein. If the amendment is not allowed, that will lead to multiplicity of proceedings. Taking into consideration all these aspects of the matter, the Trial Court permitted the plaintiff to amend the plaint by incorporating the new grounds. I find that there is no infirmity or irregularity in the findings recorded by the Trial Court. The Hon'ble Supreme Court in a judgment reported in Vidyabai and Others Vs. Padmalatha and Another, held that, in order to avoid multiplicity of proceedings, the Court can permit the parties to amend the plaint provided that the amendment is required to decide

the real issue. In the said case, the amendment is very much required to decide the issue. The petitioners have not made out a case to interfere with the order passed by the Trial Court. Accordingly, I pass the following:

ORDER

The writ petition is dismissed.