

(2019) 07 MAN CK 0014

In the Manipur High Court

Case No : Civil Revision Petition (CRP ART. 227) No. 2 Of 2018, Revenue Revision Case No. 68 Of 2013) In Miscellaneous Cases No. 100 Of 2015, Original Suit No. 1 Of 2014

Sagolsem Thambaljao Singh And Others

APPELLANT

Vs

Sagolsem Komol Singh And Others

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 &mdash Order 6 Rule 17

Citation : (2019) 07 MAN CK 0014

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Ng. Premkumar, Th. Modhu

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri Ng. Premkumar, Advocate for the petitioner and Shri Th. Modhu, Advocate for the respondent.

[2] The instant civil revision petition is directed against the order dated 16-10-2015 passed by the learned Civil Judge, Senior Division, Imphal West in Judl. Misc. Case No. 100 of 2015. [Original Suit No. 1 of 2014]

[3.1] Facts and circumstances as narrated in the instant petition, are that the respondent filed an original suit being O.S. No.1 of 2014 before the learned Civil Judge, Senior Division, Imphal West against the petitioner praying for declaration of title / ownership over the suit land and also a decree for evicting the petitioner from the suit land and deliver the possession thereof. The allegations made in the suit are inter-alia that the respondent purchased the suit land from Shri Soram Basna in the year 1966 and since then, the members of the family including the petitioner and other members had been enjoying the produce of the suit land upto 1996. From the year 1996, the petitioner has been in possession

of the said suit land as permitted by the respondent but since the petitioner claimed hostile title against the respondent, he filed the said suit.

[3.2] The petitioner filed his written statement contending inter-alia that he got married in the year 1968 and started having his separate kitchen from the year 1972. Even after having a separate kitchen, he continued to be in possession of the suit land and in spite of frequent disturbance by the respondent as regards the possession of the suit land, the petitioner has been continuing in his possession of the suit land adversely to the interest of the respondent by growing different varieties of paddy crops. Therefore, the petitioner claimed ownership of the suit land by way of adverse possession. During the course of proceedings of the suit, the petitioner realized that his written statement did not contain the details of the mode of adverse possession, although he had stated the details thereof to his counsel at the time of conference and accordingly, the petitioner filed a Judl. Misc. Case No.100 of 2015 for amendment of the written statement praying for deletion of certain portion in paragraph 5 and for insertion of a new sub-paragraph as shown in the amendment application. The respondent filed his written objection to the said amendment application.

[4] The said amendment application was heard on several days and during the course of hearing, the petitioner filed his written arguments dated 06-07-2015 with a list of citations which were received by the court on the same day. However, the learned Civil Judge, Senior Division, Imphal West rejected his amendment application vide order dated 16-10-2015 on the ground that the purpose of amendment was quite contradictory to what the petitioner had stated earlier. Being aggrieved by the said order dated 16-10-2015, the instant petition has been filed by the petitioner on the inter-alia grounds that the learned Civil Judge, Senior did not consider his written arguments at all; that the learned Civil Judge, Senior failed to consider the wide power, unfettered discretion to allow amendment in terms of the decisions rendered by the Hon'ble Supreme Court reported in AIR 2006 SC 2832 and AIR 2006 SC 1647; that the learned Civil Judge, Senior Division failed to consider the fact that the petitioner took a plea of adverse possession in paragraph 8 of the written statement and the proposed amendment was nothing but to elaborate the factum of adverse possession and that the learned Civil Judge, Senior Division failed to consider the fact that the respondent had admitted the possession of the suit land by the petitioner from the year 1996.

[5] An affidavit-in-opposition was filed by the respondent admitting that from the year, 1996, the petitioner has been in possession of the suit land till the date of filing the objection and the rest of the allegations were totally denied. It has been stated that there is no good ground for admitting the present civil revision petition as the learned Civil Judge, Senior Division has rightly held that the proposed amendment was contrary to the written statement-cum-counter claim of the petitioner. The petitioner has concealed the material facts from this court and that although the proceeding of the suit land was kept in abeyance, only on

17-03-2016 the petitioner moved an application for adjournment on the ground that this court had kept the further proceedings of this suit in abeyance. The respondent came to know about the pendency of the present civil revision petition only on 17-03-2016, when the petitioner informed the learned Civil Judge, Senior Division about the pendency thereof. The petitioner has not approached this court with clean hands and therefore, the present civil revision petition is liable to be dismissed.

[6] Paragraph 5 and 8 of the written statement filed by the petitioner read as under:

"5. That, with ref. to para No.4 of the petition the answering respondent beg to submit that regarding the entry of the plaintiff in the relevant land record by cancelling the name of S. Basna Singh was done in consultation with the family member of the defendant/ plaintiff as the same suit land was purchased for the sake of the family members as aforesaid. Therefore, the defendant strongly denied the statement that right from the date of purchase of the suit land till 1993 and from 1999 till 2000 the said land was under the tenancy of Chongtham Chandramani Singh of Langthaban Kunja Makha Leikai.

In this regard it is to say that after purchased of the suit land both the family male members the plaintiff, the defendant and their younger brother S. Chandranu Singh cultivated the suit land as it was a joint family property and enjoyed the product from time to time and at any point of time the plaintiff never engaged any person to cultivate the suit land. Therefore, such assertion as alleged by the plaintiff is nothing but concocted and fabrilous one. It is further submitted that the suit land in question have been allowed to cultivate and enjoyed the product from the time to time by the defendant after he married as the defendant had separate kitchen and his own family

8. That, with reference to para No.7 of the petition the answering defendant denied the whole statement made therein in the above paras. Further, it is humbly submitted that concealing the factum of entering the name of the defendant in the suit land, the plaintiff is trying to evade the right and the title of the defendant over the suit land. Even assuming but not admitting that the suit land was purchased by the plaintiff but the same has been under direct physical possession and occupation of the defendant for the last about 34/35 years without any interference in any manner whatsoever, in other words the right, title and interest of the defendant is perfected by long and continuous adverse possession. "

The proposed amendment sought for by the petitioner in his application reads as under:

PROPOSED AMENDMENT

(i) Delete the second sub paragraph under paragraph No. 5 of the written statement with the words "In this regard it is to say that after purchased of the

suit land both the family male members the plaintiff, the defendant and their younger brother S. Chandranu Singh cultivated the suit land as it was a joint family property and enjoyed the product from time to time and at any point of time the plaintiff never engaged any person to cultivate the suit land. Therefore, such assertion as alleged by the plaintiff is nothing but concocted and fabrilous one. It is further submitted that the suit land in question have been allowed to cultivate and enjoyed the product from the time to time by the defendant after he married as the defendant had separate kitchen and his own family."

(ii) In place of the above sub paragraph insert the following sub paragraph after paragraph No. 5 of the written statement cum counter claim of the defendant.

"In the year 1971 the defendant separated from joint family by having separate kitchen. After having separate kitchen the defendant continued cultivating possession of the suit and. In the month of March 1980 the plaintiff and his men asked the defendant and his men not to continue cultivating possession of the suit land on the ground that he purchased the suit land in the year 1966 from one Soram Basna Singh. The defendant resisted the claim of the plaintiff by saying that the defendant has been in possession of the suit land as owner and hostile to anybody including real owner since the year 1971. There was serious exchange of words between the plaintiff and the defendant at home as well as at the suit land several times in the month of March, 1980, at the time of cultivating and harvesting of the suit land, and the possession still continue till date in spite of serious objection by the plaintiff and his men to the possession of the suit land. The defendant and his men have been possessing the suit land as owner adversely to the interest of the plaintiff much more than statutory period of twelve years. In recognition of the possession of the suit land the defendant's name has been recorded in the revenue record in the month of November, 2000. Revenue of the suit land is also paid by the defendant. Even after entering the name of the defendant's name in the revenue record, the plaintiff and his men continue to disturb and interfere the possession of the defendant over the suit land more specially at the time of cultivation and harvesting the suit land several times. In spite of hostile attitude shown by the plaintiff and his men, the defendant and his men have been possession the suit land for the last thirty four years till date. As such the mode of possession by the plaintiff over the suit land is totally denied."

[7] From the perusal of the written statement filed by the petitioner as a whole including paragraph 5 and 8 thereof, the stand of the petitioner appears to be that his father had died as early as in the year, 1941 leaving behind him, the petitioner, the respondent, another son, a daughter and his wife. Although the respondent was married, he had no regular source of income and had to depend upon his mother or the petitioner who had joined as Demonstrator in the Sericulture Department, Government of Manipur. The respondent being the senior most male member of the family, he used to manage the family till 1968 when the petitioner got married. After procuring the money from the members of

the family and in particular, the petitioner, the suit land was purchased by him for the sake of the family and was allowed to be recorded in his name. Accordingly, he used to pay the revenue. The suit land was jointly cultivated but since the suit land was purchased out of the monthly income as collected from the petitioner, sometime in the year, 2000, both of them approached the office of the Sub-Deputy Collector for mutation in the name of the petitioner and the order dated 20-11-2000 was passed in their presence. His further case is that since he has been in possession of the suit land for the last many years, his right, title and interest have been perfected by virtue of adverse possession as stated in para 8 of the written statement. Moreover, a similar statement has been made in para 13 of the written statement. The possession of the suit land by the petitioner for such a long time is not denied by the respondent and all that he has stated in his plaint, is that in the year 1996, when he was approached by the petitioner, he allowed him to cultivate the suit land, with hired tenants, by giving half of the usufructs.

[8] From the aforesaid averments made in the written statement, it cannot be said that there is no plea at all as regards the adverse possession. It has been submitted by Shri Ng. Premkumar, the learned counsel appearing for the petitioner that the amendment sought for by the petitioner is to explain the mode of adverse possession, for which reliance has been in the decisions of the Hon'ble Supreme Court rendered in Rakesh Kumar Aggarwal & ors Vs. K.K.Modi & ors, (2006) 4 SCC 385 and Baldev Singh & ors Vs. Manohar Singh & anr, (2006) 6 SCC 498. An amendment of pleadings is permissible under the provisions of Order 6 Rule 17 which provides that the court may at any stage of the proceedings allow either party to alter pleadings and such amendment shall be made if it is necessary for the purpose of determining the real questions in controversy between the parties. An exception has been carved out in the proviso which provides that no application for amendment shall be allowed after the trial has commenced and it can be allowed provided the court comes to the conclusion that in spite of due diligence, the party could not have raised before the commencement of the trial.

[9] In the present case, the petitioner in his written statement has already taken a plea that he acquired his right and title over the suit land by way of adverse possession, because of which the issue 5 has been framed by the trial court. It is not a new plea that is sought for in the amendment application. Only an explanation is sought for as regards the adverse possession. The learned Civil Judge, Senior Division has rejected the application for amendment of the written statement by referring to the averments made in para 5 only but the averments made in para 8 and 13 as regards the adverse possession, have not been considered at all. Moreover, it may be noted that it is nowhere mentioned in para 5 of the written statement as to the period during which the suit land was cultivated jointly. The respondent in his pleadings has stated that the petitioner has been permitted by him to cultivate the suit land since the year, 1996. Since then, the petitioner may have continued to be in possession of the suit land and

therefore, the learned Civil Judge, Senior Judge has rightly framed the issue as to whether the petitioner has acquired the right and title over the suit land by way of adverse possession. Therefore, there is no harm in allowing the application for amendment which will not affect the right of the respondent. It is for the petitioner to prove his plea of adverse possession during the trial in accordance with law. In view of the above, the order dated 16-10-2015 is bad in law and is accordingly liable to be quashed and set aside.

[10] For the reasons stated hereinabove, the instant civil revision petition is allowed subject to payment of Rs.1000/- (Rupees one thousand) only as costs to be paid to the respondent and consequently, the application being Civil Misc. Case No.100 of 2015 is allowed with the direction that the petitioner shall file a recast written statement within the time granted by the learned Civil Judge, Senior Division.

List the matter before the learned Civil Judge, Senior Division, Imphal-West on 19-07-2019 for further proceedings and both the petitioner and the respondent are directed to appear before it on the said date without fail. The Registry of this Court is directed to return the original records to the concerned court as quickly as possible, preferably within a week from today.