
(2004) 10 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 528 (MS) of 1996

Saraswati Shishu Mandir

APPELLANT

Vs

1st Additional District Judge and Another

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 153

Constitution of India, 1950 — Article 226

Transfer of Property Act, 1882 — Section 106

Citation : (2004) 10 AHC CK 0025

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : Ved Prakash, for the Appellant; R.C. Gupta, for the respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Misra, J.—This writ petition has been filed under Article 226 of the Constitution of India for quashing the order dated 15.2.1996 annexure-6 to the writ petition passed by 1st Additional District Judge-respondent No. 1 by which the amendment application moved by the plaintiff-respondent No. 2 was allowed.

2. The facts of the case in brief are that, the respondent No. 2 filed a civil Suit on 30.10.1977 for ejectment and recovery of arrears of rent and damages against the petitioner-institution through its Principal after serving a notice, terminating the tenancy u/s 106 of the Transfer of Properties Act. A plea was also raised that the premises being a new construction, the provisions of U.P. Act 13 of 1972 were not applicable. The petitioner-defendant No. 1 filed its written statement, and amongst other pleas it was pleaded that, the suit filed as such was not maintainable and the defendant ought to have been represented through Manager instead of Principal, since the Manager was the only authority entitled to represent the defendant-petitioner as such the suit should fall. The trial Court, after hearing the parties dismissed the suit, on the ground that, since there is no

provisions for changing the names in the array of the parties till the amendment had not been sought and incorporated and, therefore, the suit had not been properly instituted and dismissed the suit and passed a decree accordingly, as the plaintiff was not entitled to any relief.

3. The respondent No. 2 filed a revision challenging the said judgment and decree dated 28.5.1993 before the District Judge, Barabanki. In revision, the opposite party No. 2 insisted that the suit was correctly filed against the defendant-school through its Principal and the contrary finding of the trial Court was wrong. However, during the pendency of the revision, the respondent No. 2 moved an application for amendment of the plaint. The amendment sought for in the array of the parties of defendant was for deleting all the words after the word "Stithi" by the words "Manager, managing committee of the society Saraswati Shishu Mandir, Bajabanki., and also for impleadment of the managing committee of the society through its manager as defendant No. 2, along with other amendments in the pleadings. The respondent No. 1 allowed the amendment application vide its impugned order dated 15.2.1996 and directed the same to be incorporated in the plaint.

4. The petitioner being aggrieved, filed the present writ petition on the ground that the Additional District Judge-respondent No. 1 had failed to apply its mind to the fact of the case, and passed a sketchy and unreasoned order and ignored to consider the rulings cited on behalf of the petitioner. It was also stated that it had ignored the plea of non-maintainability of the suit for not having been filed against the proper person.

5. Counter affidavit has been filed on behalf of the respondent No. 2 contravening the averments made in the writ petition. Learned counsel for the petitioner has submitted that, the order passed by the respondent No. 1 allowing the amendment sought for by the opposite party-petitioner at appellate stage was wrong, bad and illegal and could not be allowed in view of the judgment passed by this court in the case of Rajesh Kumar Agrawal Vs. Virendra Kumar Agrawal and others, , wherein it has been held that the amendment should be allowed only when it does not cause injustice to the other side or it does not affect the right already accrued to the other side or where the trial court accepted certain averments made by the plaintiff in his plaint and on that basis partly dismissed the plaintiff's suit, as a consequence of which the defendant acquired certain rights, the plaintiff could not be allowed to amend the plaint seeking deletion of those averments at appellate stage as it would amount to rendering the trial court's decision redundant.

6. Learned counsel for respondent No. 2 has submitted that it is settled law that if the suit is altered by the proposed amendment, which would change the nature of the suit and does not prejudice the other side, the amendment can be allowed even at the appellate stage. He has further submitted that, in the present case, by incorporating the amendment sought for in the plaint, and allowed by the respondent No. 1 does not change the nature of the suit at all nor any right has

accrued to the petitioner-respondent which would be defeated. He has relied upon the decisions in the case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, , Ganesh Trading Co. Vs. Moji Ram, and Haridas Aildas Thadani and Others Vs. Godrej Rustom Kermani, .

7. Sri Ved Prakash learned counsel for the petitioner has submitted at the bar that the issue of Non-joinder of parties was neither framed nor decided as such by the trial Court. The plaintiff arrayed the school as defendant through its principal, though the school is not a juristic person. It is the society/managing committee, which runs the school and should have been impleaded through its manager as defendant.

8. In my view, in the present case, the appellate Court rightly allowed the amendment application moved by the respondent No. 2 seeking impleadment of defendant No. 2 in the array of parties and other amendments in the body of the plaint and committed no illegality in doing so. It is settled law that, amendment sought in the plaint under Order VI Rule 17 and Section 153 of the Civil Procedure Code, the Court while applying its discretion should not refuse the said amendment on technical ground. The power to grant amendment of the pleadings is intended to serve the ends of justice and should not be allowed to be governed by any such narrow or technical limitation. Any mis-description which in law can be accorded, as has occurred in the present case, the array of the party should be allowed to be corrected as laid down in catena of decisions. It has been held in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, :

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot refused just relief merely because of some mistake, negligence, inadvertence or even infractions of the rules of procedure. The court always gives leave to amend the pleadings of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

9. The appellate Court- respondent No. 1 has rightly allowed the amendment sought for to enable a proper description of the defendant to appear in it, in the case, in order to assisted the court in determining the real question or issue between the parties. It is well settled, that the procedural law is intended to facilitate and not to obstruct the course of substantive justice. The defective pleadings are generally curable if the out come of the amendment sought for and the cause of action to be brought out was not abinitio completely absent. The Court should be extremely liberal in granting the prayer of amendment of the pleadings, unless serious injustice or irreparable loss is caused to the other side or unless and until it has acquired or perfected certain valuable rights, such as of limitation.

10. This Court, while exercising its discretionary power under Article 226 of the Constitution of India, does not, in the absence of cogent reasons or compelling circumstances intend to interfere with the discretion exercised by the respondent No. 1 in allowing the amendment, I find that by the said amendment, no question of any injustice has been caused to the respondent-petitioner, since he has been allowed costs towards compensation, more so, since, the defendant itself had raised the plea, that, the society represented by the manager had not been impleaded by the plaintiff, the plaintiff subsequently acting thereupon though at the revisional stage, has sought for the impleadment, and also since the proposed defendant No. 2 to the writ petition who has been allowed to be incorporated as such, by way of amendment by the respondent No. 1 did not come forward and challenge its impleadment.

11. In view of the facts, and circumstances of the case, and observations made herein above, the plaintiff-respondent No. 2 will file his amended plaint and pay the cost to the petitioner, imposed by the respondent No. 1 within a period of one month from today. The writ petition is dismissed. No order as to costs.