

(2011) 12 UK CK 0108

In the Uttarakhand High Court

Case No : Writ Petition No. 1382 (M/S) of 2006

Shiv Mandir Intejam Karta

APPELLANT

Vs

Civil Judge (J.D.) Khatima and others

RESPONDENT

Date of Decision : 29-12-2011

Acts Referred:

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

Citation : (2011) 12 UK CK 0108

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Tarun Agarwala, J.—Heard Sri Sharad Sharma, the learned Senior Counsel assisted by Sri Anirudh Joshi, the learned counsel for the petitioner, Sri Sudhir Kumar, the learned Brief Holder for the State/respondent no. 1 and Sri A.K. Joshi, the learned counsel holding the brief of Sri Sandeep Tandon, the learned counsel for respondent nos. 2 & 3.

2. The petitioner is the plaintiff and had filed a suit for injunction restraining the defendant from interfering in the property in question. During the pendency of the suit, the petitioner moved an application under Order 6 Rule 17 C.P.C. seeking amendment in the plaint. The amendment sought was that the defendant was wrongly described in the array of parties, which was required to be corrected. Further, the particulars and description of the property was also not properly described. Other amendments were sought in various paragraphs of the plaint. The said application was resisted on the sole ground that the plaintiff was trying to delay the proceedings and by changing the array of parties, the title and style of the suit would be altered, which was not permissible. It was also alleged that the issues were framed in the year 1998 and preliminary issues were decided in the year 2000 and that the amendment sought was totally belated with the view to prolong the litigation and consequently, amendment was not bonafide. The trial court by the impugned order rejected the application under

Order 6 Rule 17 C.P.C. The petitioner, being aggrieved, has filed the present writ petition.

3. Having heard the learned counsel for the parties at some length and having perused the impugned order, the Court finds that the reasoning adopted by the trial court was patently perverse and was not based on any sound reasoning. The trial court had rejected the amendment application on the ground that the plaint filed by the plaintiff was of 3 pages, whereas the amendment sought was of 4 pages. The trial court while rejecting the amendment application also directed the plaintiff to return the plaint to be presented afresh. By the said order, the trial court virtually dismissed the suit giving liberty to the plaintiff to file afresh.

4. In the opinion of the Court, the reasoning given by the trial court is patently absurd. If the amendment sought was not barred by limitation and an opportunity was given to the plaintiff to file a fresh plaint, it is not logical to direct the plaintiff to file a fresh plaint when necessary amendments can be incorporated in the existing plaint. Further, the Court cannot fathom the reason of the court below to the effect that the amendment sought was of 4 pages, whereas the plaint itself was of 3 pages.

5. In the light of the aforesaid, on this short ground itself, the impugned order cannot be sustained and is quashed. The writ petition is allowed. The amendment sought is also allowed on payment of cost of Rs. 3,000/- (rupees three thousand), which the plaintiff will deposit before the trial court within four weeks from today. The defendant can withdraw the said amount without furnishing any security. Since the suit is an old one, the trial court is directed to proceed on a day-to-day basis till the disposal of the suit.

Certified copy of this order shall be sent by the registry to the court below within two weeks from today for necessary information and action.