
(1999) 09 AHC CK 0056
In the Allahabad High Court
Case No : Civil Revision No. 351 of 1999

Smt. Anita Singh and others	Vs	APPELLANT
Pratap Singh and another		RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11

Citation : (1999) 4 AWC 3192 : (1999) AWC 3192 : (2000) 1 CivCC 215

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : Jitendra Pal Singh, for the Appellant;

Judgement

B.K. Shaima, J.—Sri J. P. Singh appears for defendant-revisionists. Heard. This revision has no substance. It appears that plaintiff-respondent No. 1 Pratap Singh filed Original Suit No. 1153 of 1994 for permanent prohibitory injunction restraining the demolition of boundary walls and encroachment over a disputed building site. There was also a prayer for mandatory injunction. These were reliefs (A) and (B) in the plaint. In respect of the two reliefs, cause of action was stated in the plaint. When the matter of valuation of the subject-matter in dispute came up, the Amin filed a report and in view of this report, the Civil Judge (Junior Division). Agra, before whom the suit was pending, directed that the plaint be returned for being filed before the proper court having pecuniary jurisdiction as he does not have pecuniary jurisdiction to entertain the suit. After this, the plaint was returned to the plaintiff and thereafter the plaintiff filed the plaint before the Civil Judge (Senior Division), Agra after making necessary amendment in the title of the plaint and by amendment in the plaint also seeking a further relief of mandatory injunction in respect of certain trees, etc.

2. The present defendant-revisionists moved an application before the Civil Judge (Senior Division). Agra, claiming that the plaint as filed before that Court, did not disclose cause of action about the newly added relief (C) in the plaint. Consequently, a prayer was made that the plaint be rejected under Order VII.

Rule 11 of the CPC for disclosing no cause of action in respect of the said relief In the plaint. The learned Civil Judge (Senior Division), Agra, after hearing the parties' counsel, passed the Impugned order dated 13.7.99 stating that though the plaint was defective for non-disclosure of cause of action in respect of the newly added relief of trees, however, the plaint could not be rejected under Order VII, Rule 11, C.P.C. because this defect is In respect of one relief alone. He has stated that the plaintiff ought to be given an opportunity to make amendment in the plaint before passing an order to delete the newly added relief. The learned Civil Judge (Senior Division), Agra, has therefore, directed that a proper amendment application be moved within seven days.

3. The learned counsel for the revisionists claimed that it was not open to the plaintiff to make amendment In the plaint after its return by the first Court for its filing before the Civil Judge (Senior Division), Agra. This argument is wholly untenable because after return of the plaint and before Its filing before the new Court, the plaintiff was free to make all amendments that may be necessary. These amendments may include even factual averments and also claim of further relief in the light of the same. In this case, further relief was claimed but a lapse was made inasmuch as the cause of action was not stated from which this further relief flowed. So long as the plaint disclosed the cause of action in respect of even one relief claimed in the plaint, the Court cannot reject the plaint under Order VII. Rule 11, C.P.C. on the ground that it did not disclose the cause of action. Under Order VI, Rule 17 of the Code of Civil Procedure, 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. In this case, it is only proper for the trial court to direct the plaintiff to move amendment application so as to disclose the new cause of action which led him to seek the relief as claimed in clause (c) of the plaint. Such an amendment is absolutely necessary for the purpose of determining the real questions in controversy between the parties. Furthermore, if during the pendency of the suit, further causes of action arise due to subsequent events, it is necessary to take notice of the same in order to shorten litigation and multiplicity of suit and to enable the Court to finally determine the real questions in controversy between the parties.

4. The revision petition is, therefore, dismissed.