

(2000) 09 KAR CK 0004

In the Karnataka High Court

Case No : Civil Revision Petition No. 3576 of 1999

Smt. Jayalakshmamma

APPELLANT

Vs

Siddalingappa

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (2000) 4 KCCR 2949

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : T.V. Anantha Murthy, for the Appellant; Jayakumar S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This revision is directed against the order dated 3rd June, 1999, whereby the Trial Court has allowed Plaintiff-Respondent's application for amendment of the plaint.

2. The Court below, while dealing with the application for amendment observes, that, this interim application is filed to amend the plaint in regard to registration of sale deed dated 20.1.1982, and also rectification of sale deed dated 22.1.1982.

The Court below opined, that if amendment sought by the Plaintiff is allowed, no change of nature of the suit will take place, and really it will avoid the multiplicity of proceedings. Further, it found that no new case is going to be introduced in the plaint. Taking this view, the Court below has allowed the application.

Feeling aggrieved from this order, the Defendant has come up in revision before this Court.

3. I have heard Sri T.V. Anantha Murthy, learned Counsel for the revision Petitioner and Sri Jayaprakash, learned Counsel for the Respondent.

4. Only contention that has been raised by the learned Counsel for the revision

Petitioner is that there has been no rectification deed, and therefore the Court has wrongly mentioned that there is deed of rectification, and amendment application has wrongly been allowed.

5. I have applied my mind to this contention. It has to be taken note of, that the jurisdiction of this Court u/s 115 of the CPC is circumscribed by the conditions mentioned in Section 115 itself. Times again, it has been pointed out by this Court as well that, as per law laid down by the Apex Court, that for initiating proceeding u/s 115 CPC and calling upon this Court to exercise its jurisdiction u/s 115, the applicant must establish the following ingredients, as conditions-precedents;

1) That the order impugned amounts to a case decided.

2) The order impugned is not appealable either to this Court or to sub-ordinate Court.

3) The order impugned suffers from jurisdictional error coming within the framework of either of Clauses (a), (b) or (c) of Section 115, as explained by the Privy Council in the case of AIR 1949 156 (Privy Council) in Keshardeo Chamria Vs. Radha Kissen Chamria and Others, , in the case of Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, , and Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, and later decisions.

6. Even if jurisdictional error is shown, it is incumbent upon the revision Petitioner to show how the order impugned, if allowed to stand, is going to cause irreparable injury or injustice to the revision Petitioner. These are the basic conditions which ought to be established, where the person approaches this Court and asks the Court to exercise its powers u/s 115.

It has also been explained in the above cases that every error is not a jurisdictional error, and Court is not entitled to correct every error u/s 115. It can only interfere with an order if there is a jurisdictional error and not otherwise. Keeping these basic principles, in view when I examine the order and the contentions of the learned Counsel I do not find any substance in the revision.

7. Law of amendment, as laid, as early as in the decision of case in Charan Das v. Amir Khan (AIR 1921 PC PG 50), which has been followed later by the Supreme Court in Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, , is that; All amendments have to be allowed which are necessary for the purpose of final determination of the controversy between the parties involved in the suit provided the amendment sought does not result in making out a new case, and if amendment is allowed it has got no tendency to cause irreparable loss or injury to the other side.

What is a new case, has again been explained in the context of Order 6, Rule 17, by their Lordships of the Supreme Court in the case of A.K. Gupta and Sons Vs. Damodar Valley Corporation, . The test is that, a new case means, the new claim based on new facts, and new ideas. The expression for the present purpose, only

means a new claim made on a new basis constituted by new facts. Their Lordships explained the new case, to be understood to mean new set of ideas, and laid it down that:

No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time, but if there are facts stated, and it only amounts to an additional approach to the same case, then additional approach will not amount to a new case.

8. The property in dispute, as stated by the learned Counsel has been described by boundaries as well as by numbers. When the property has been described by boundaries, and there is no change being made therein the amendment is only to correct the number of the property, i.e., survey number etc. but the property remains same, and alleged on the basis of deed of rectification, as is mentioned in the deed. Then, Trial Court rightly held that it will not amount to making out a new case, and when it did not amount to a new case, and no prejudice will be caused. In my view, thus considered the Lower Court did not commit any jurisdictional error in allowing the amendment.

As regards the contention of the learned Counsel for the revision Petitioner, that, there has been no deed of rectification, that plea is always open to be taken by him by way of additional written statement, when the plaint is amended, and then Court will try that as an issue, and Plaintiff may have to prove that there has been rectification of the sale deed by deed dated 22.1.1982, as has been sought to be alleged by way of amendment, but that cannot be a ground to reject the amendment application, or to interfere u/s 115 of the Code with the order impugned. Thus considered the revision is devoid of merits, and as such is dismissed with costs assessed at Rs. 550/-, payable to the Respondent by the revision Petitioner.