

(2011) 07 AHC CK 0358
In the Allahabad High Court
Case No : Writ A. No. 40367 of 2011

Smt. Sumita Samanta and others

APPELLANT

Vs

Nand Kishore Jaiswal and others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

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

Citation : (2011) 114 RD 533

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shashi Kant Gupta, J.—Respondents No. 1 to 3 are represented by Sri Anup Trivedi, learned Counsel. He does not propose to file counter affidavit.

2. The present writ petition is disposed of finally with the consent of the learned Counsel for the parties.

3. The present writ petition is directed against the order dated 6.7.2011 passed by the Prescribed Authority/Additional Judge, Small Causes, Allahabad whereby the application filed by the petitioners for amendment in the written statement was rejected.

4. The dispute relates to a shop bearing municipal number 11-A/30 situated at University Road, Colonelganj, Allahabad. The respondents filed a release application on 13.7.2010 u/s 21(1)(a) of the UP Act No. 13 of 1972 (in short "the Act") for the release of the shop in dispute.

5. The petitioners filed a written statement and denied the bona fide need of the respondents. During the pendency of the release proceedings, an application was filed by the petitioners in February, 2011 for amendment in the written statement on the ground that while preparing the written statement, the petitioners have the information and impression that the disputed building No.

11-A/30 University Road, Allahabad was purchased by Sri P. K. Pramanik and Hare Krishna Pramanik in 1977 from the erstwhile landlady Smt. Yashoda Devi in equal shares but when the petitioners saw the sale deed, then it was learned that the said building was purchased by Vishwa Nath Pramanik, Tapan Kumar Pramanik, Atul Kumar Pramanik (all sons of Sri P. K. Pramanik) and their uncle Sri Hare Krishna Pramanik in equal share. The said building was not sold by Smt. Yashoda Devi but sold by Sri Krishna Sharma, Sripat Sharma and Srikant Sharma.

The amendment was proposed in para 17 of the written statement. For ready reference relevant portion of paragraph 17 of the written statement is quoted below;

That para 2 of the petition is not admitted for want of knowledge. The opposite parties also do not know that whether there is any partition among the applicants specifying the shares of the applicants among themselves as such the opposite parties does not know that share in South has gone to petitioner No. 1 and share has gone to applicants No. 2 and 3. The opposite parties also does not know regarding any partition suit No. 647 of 2003 Nand Kumar v. Japan Kumar Pramanik. The opp. parties also do not know about any decree in the alleged suit. To the knowledge of Opp. Parties the house No. 11-A/13, University Road was purchased by P. K. Pramanik and Hare Krishna Pramanik in the years 1977 from the erstwhile owner/landlady Smt. Yashoda Devi in equal share. The rent was received by P. K. Pramanik and after his death by his heirs for themselves and for Hare Krishna Pramanik. The pedigree of Hare Krishna Pramanik. The pedigree of Krishna Pramanik and P. K. Pramanik is given below

At this stage, it is also relevant to quote the proposed amendment in the written statement;

6. That the following amendment in the written statement is to be carried out as under:

(A) That on page 5 of written statement para 17 line 12 before the word ""P.K. Pramanik" and after the word "by" the following be added "Vishwanath Pramanik, Tapan Kumar Pramanik, Atul Kumar Pramanik all sons of"

(B) That in the same page 5 of written statement in para 17 line 14 the word "land lady Smt. Yashoda Devi" be deleted and in the word "owner" letter "s" be added and after the word "owners" the name of "Sri Krishna Sharma, Sripat Sharma and Sri Kanth Sharma" be added.

(C) That in the same page in para 17 line 14 after the word "sharer" the following be added:- "as such each has 1/4th share in the property".

6. The said amendment application was rejected by the Court below by order dated 6.7.2011. Hence the present writ petition.

7. It is submitted by the learned Counsel for the petitioners that the amendment

sought by the petitioners goes to root of the matter and was necessary for the purpose of determining the real controversy between the parties. It was further submitted that the amendment sought by the petitioners is necessary on the facts and circumstances of the case as the facts sought to be amended are admitted and have not been denied by the respondents and the said facts are apparent from the sale deed executed by Sri Krishna Sharma and three others in favour of Vishwanath Pramanik, Tapan Pramanik, Atul Kumar Pramanik and their uncle Hare Krishna Pramanik on 26.8.1977. It was further submitted that the amendment sought by the petitioners is necessary and the Court below at any stage of proceeding under Order VI Rule 17 CPC can permit the parties to amend their pleadings. It is further stated that the duty of the Court as well as to the parties to bring on the correct pleadings as per the record and the amendment sought cannot amount to be withdrawal of their admission. It is further submitted that it is well settled that any admission made by the parties in their pleadings can be either better explained and even withdrawn by way of amendment. It was further submitted that the amendments sought by the petitioners neither changes the nature of the case nor it causes any loss to the respondents.

8. Learned Counsel for the respondents vehemently opposed the writ petition and submitted that the proposed amendment amounts to withdrawal of their own admission which is impermissible under law.

9. Heard the learned Counsel for the parties and perused the material available on record.

10. In *Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others*, it was laid down that the rule of amendment is essentially a rule of justice, equity and good conscious; and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

11. In this connection, it is also apt to extract Rule 17 of Order VI CPC, which is as under:

17. Amendment of pleadings.--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:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

12. The first limb of the Rule 17 of Order VI CPC viz. "the Court may at any stage of the proceedings allow either party to alter or amend their pleadings in such manner" is discretionary in view, of the word "may" used therein; The second

limb of the Rule 17 of Order VI, CPC i.e. "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties" is imperative in view of the word "shall" used. However, the proviso to Rule 17 of Order VI CPC expressly bars such amendments after the commencement of the trial of suit. But still, the bar imposed under the proviso to the Rule 17 of Order VI CPC is not absolute, because, even after the commencement of the trial, the Court may allow either of the parties to amend or alter their pleadings, if the Court comes to the conclusion that despite due diligence, the parties could not raise the matter before the commencement of the trial. It is in this sense, the power to amend the pleadings, is wide, and such power of the Court should not be mere hypertechnical. It should be exercised liberally. With this background, now let us consider the submissions made by either side.

13. A bare perusal of the amendment sought clearly shows that the correct facts have been sought to be introduced on the basis of sale deed which appears not to be in the knowledge of the petitioners at the time of filing of the written statement. Paragraph 17 of the written statement, inter alia, states as follows;

The opp. parties also do not know about any decree in the alleged suit. To the knowledge of opp. parties the No. 11-A/13, University Road was purchased by P. K. Pramanik and Hare Krishna Pramanik in the years 1977 from the erstwhile owner/landlady Smt. Yashoda Devi in equal share. The rent was received by P. K. Pramanik and after his death by his heirs for themselves and for Hare Krishna Pramanik. The pedigree of Hare Krishna Pramanik.

14. Now, by way of amendment, Paragraph 17 of the written statement is sought to be amended by stating correct names of the purchaser and seller of the property as mentioned in the sale deed.

15. A bare perusal of the impugned order would clearly show that the Court below did not examine the record of the case with thoroughness which was expected at the time of disposal of the application. The amendment application has been rejected mechanically by slip shod order and have drawn cryptic, abrupt, arbitrary and erroneous conclusion and has not addressed to the real question. The impugned order is based on complete misreading of the case and misconception of the legal position relevant to the matter.

16. In the case of Steel Authority of India Limited v. State of West Bengal 2008 (71) AIC 54 (SC) : 2008 (119) FLR 589 (SC) has held as follows:

That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence

does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the Courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

17. The reasons given by the Court below are superficial and the Court below has applied casual and superficial approach. The amendment sought by the petitioner does not. cause any prejudice or loss to the respondents. It is well settled law that while considering the amendment in the pleadings, a lenient and liberal view ought to have been taken by the Court in order to advance justice to the parties. It is also noteworthy that the application u/s 21 itself was filed on 13.7.2010 and the amendment application was filed in February 2011, as such, it cannot be said that any dilatory tactics was adopted by the petitioners.

18. The Court below has taken a very technical view of the matter and did not examine the matter in proper perspective, as such, the writ petition deserves to be allowed.

19. In this view of the matter, the writ petition is allowed and the impugned order dated 6.7.2011 passed by the Court below is hereby set aside. The Court below is directed to allow the petitioners to make proposed amendments in their written statement subject to payment of Rs. 1,000/- as costs to the respondents-plaintiffs.

20. The amendment will be allowed in case, the amount of Rs. 1,000/- is paid to the respondents-plaintiffs within one month from today.

21. It is further provided that the Court below will make every endeavour to expedite the proceedings of the case without granting any undue adjournment to the parties.