
(1996) 09 AHC CK 0106
In the Allahabad High Court
Case No : Civil Revision No. 275 of 1996

Smt. Veena Mathur

APPELLANT

Vs

Anil Agarwal and Others

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 6 Rule 17

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1996) 09 AHC CK 0106

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : Pankaj Naqvi, for the Appellant; Subodh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—This is a revisional application u/s 25 of the Provincial Small Causes Courts Act challenging an order dated 31.7.1996 recorded by the Court of Small Causes, Bareilly (3rd Addl. District Judge) in SCC Suit No. 1 of 1993. By the impugned order the learned Judge had allowed a prayer to implead Defendant No. 2 on the prayer of the Plaintiff. The aggrieved Defendant No. 1 has preferred the present application.

2. The suit was originally filed against the Defendant No. 1 alone by the four Plaintiffs for her eviction from a premises wherein she was described as a tenant. On her appearance Defendant No. 1 took up a plea that she was not the tenant in the premises, rather the Harrow Preparatory School, Rampur Gardens, Civil Lines, Bareilly, was the tenant and she, being the Manager of the school, was living under an allotment from the school. Only thereafter the Plaintiff filed an application under Order VI, Rule 17, CPC for amendment of the pleading only to incorporate the name of the Harrow Preparatory School, as Defendant No. 1. This prayer was allowed after hearing both the existing parties by the order now impugned.

3. It was urged by the learned Counsel for the revisionist that Order VI, Rule 17 spoke of amendment of pleading and the cause-title of a plaint could not be regarded as pleading and it could not have been amended in exercise of the powers under Order VI, Rule 17, CPC. In support of his contention he relied on a decision of the Allahabad reported in Mahboob Ullah Vs. Jwala Prasad Kajriwal and Another, . It was held herein that the title of the suit could not be treated as part of the plaint as it was not covered by verification appended at the foot of the plaint. It was contended that in fact the court had exercised its powers under Order 1, Rule 10 (2), CPC although there was no prayer therefor. The other party contended that if anybody could have been aggrieved by the impugned order it was the newly added Defendant No. 2 and the present revisionist, by no stretch of the law, could have a right to challenge the order as illegal.

4. It is not necessary to go into the question if the cause-title of a plaint could be treated as a part of the plaint. It can only be stated on that point that the requirements of a plaint clearly indicate that it should contain, the name, residence and other description of the parties. Here is a case where the court had palpably exercised his right under Order 1, Rule 10 (2), CPC although the application was purported to be one under Order VI, Rule 17. We are faced with a fundamental question whether the court will be guided by the mere mention of the section or the real prayer made therein, or to put it technically, whether the court will be guided more by the form than by the contents. In my view, when a prayer is made before a court the court is to go by the substance thereof, i.e., the contents and not the mere mention of some or other provision. The prayer made by the Plaintiff was clearly for addition of a Defendant and Order 1, Rule 10 (2) empowers the court to implead such a person as Defendant who ought to have been made a party. The original plaint made only Defendant No. 1 a party but the written statement raised a plea that it was the school which was really the tenant. The Plaintiff did not accept that contention but to avoid any legal defect the Plaintiff simply prayed for impleadment of the school also as Defendant No. 2. The prayer was outright one for an action under Order 1, Rule 10, CPC. The order that was passed by the court below may not be strictly under Order VI, Rule 17 but it was within the jurisdiction of the court under Order 1, Rule 10 (2) of the CPC to record an order for impleadment and it could not be stated that the order was passed without jurisdiction.

5. Learned Counsel for the revisionist submitted that for a revision u/s 25 of the Provincial Small Causes Courts Act, any error of law could be corrected by the High Court. Assuming this submission to be true, it must be shown that there was an error of law. It cannot be conceded that mere wrong mention of Order VI, Rule 17 is such an error of law which requires interference when in fact the powers for impleadment lay with the court below and was exercised, albeit in the name of exercise of another power. I find no reason to interfere with the order.

6. In the result, this revision-application stands dismissed.