

(2012) 07 SIK CK 0002
In the Sikkim High Court
Case No : C.R.P. No. 3 of 2012

Smt. Yangzila Bhutiani

APPELLANT

Vs

M/s. Naurantanmal Ashok Kumar, Sri Sampatmal Buccha

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Citation : AIR 2013 Sikk 12

Hon'ble Judges : Permod Kohli, C.J

Bench : Single Bench

Advocate : J. B. Pradhan, with Mr. D. K. Siwakoti and Ms. Prarthana Ghataney, for the Appellant; Gulshan Rai Nagpal, for the Respondent

Judgement

Permaod Kohli, Cahief Justice

1. This petition under Article 227 of the Constitution of extent, an application filed by the petitioner (plaintiff) for amendment of the plaint has been rejected. As a matter of fact, the petitioner had filed two applications - one under Order XXVI Rule 1 CPC for issue of commission and another under Order VI Rule 17 seeking amendment of the plaint. The controversy in the present petition relates only to the issue of the amendment. The plaintiff filed a suit for eviction and recovery of possession, recovery of arrear of rents, mesne profits etc. against the respondents in the Court of the District Judge, Special Division - I, Gangtok. During the pendency of the suit, the plaintiff made an application for amendment of the plaint so as to incorporate certain facts pertaining to registered sale deeds and to add another ground of eviction that is the personal necessity for her three sons who are said to be totally unemployed and intend to start their own business and avocation in the suit property. The trial Court vide the impugned order rejected the prayer for amendment with the following observations: -

6. Moreover this Court has repeatedly tried to impress upon parties and their respective counsel that this is one of the oldest pending matters in the Court and hence every effort must be made on everybodys part to expedite the matter.

However, I find in total disregard to the same counsel for plaintiff chooses to frequently file miscellaneous applications. In this regard, as the application under order VI rule 17 read with Sec. 151 which has been filed seeking amendment in paragraph 4, 6 and 11, after nine years four months and three days. In my opinion the same being filed at this belated stage after several issues has been raised by Id. counsel for plaintiff and despite orders of Hon''ble High Court of Sikkim to expedite the trial, I hereby reject the same as it is found same has been filed merely to delay the trial further.

2. The grievance of the petitioner is that the trial Court has committed a glaring illegality in not considering the merit of the application and rejected the same only on the ground of delay in total disregard of the settled principles of law inasmuch as the claim for amendment has not been examined at all. Mr. J. B. Pradhan, learned Sr. Counsel appearing for the petitioner submits that the claim for amendment, if otherwise permissible in law, should not have been rejected merely on the ground of delay, particularly when the party has a right to file a fresh suit as well. He has placed reliance upon a judgment of the Hon''ble Supreme Court reported in *Surender Kumar Sharma Vs. Makhan Singh*, . In this case, under similar circumstances an amendment was sought after some delay seeking to add another ground of eviction. The trial Court as also the High Court rejected the prayer on the ground of delay. Hon''ble Supreme Court, however, set aside the judgment of the Courts below including that of the High Court and allowed the amendment. The facts of the present case are similar to the above case.

3. At this stage, Mr. Pradhan submits that the petitioner may be allowed to withdraw this suit with liberty to file a fresh one so as to incorporate all necessary details in respect to the ground of personal necessity as well. His submission is that the plaintiff/petitioner be allowed to file a fresh suit on the same cause of action with addition to new ground of eviction. Mr. Gulshan Rai Nagpal, learned counsel appearing for the respondents (defendants) submits that he has filed a counter claim and if the plaintiff is allowed to withdraw the suit, he has instruction not to withdraw the counter claim and thus counter claim be allowed to continue as a separate suit. Obviously no party can be compelled to withdraw the counter claim though filed in the same suit and can be treated as a separate lis even if the suit is dismissed or withdrawn. There is merit in the contention of Mr. Nagpal. He has further submitted that since the petitioner's present suit is vexatious, he cannot be permitted to withdraw the suit and file a fresh. In order to support his contention, he submits that the plaintiff/petitioner in her cross-examination while appearing as a witness in trial Court has submitted that she has no personal knowledge of facts and circumstances of the litigation. I am afraid that this can be a ground to deny her right to withdraw this suit with liberty to file a fresh one, when the petitioner has definitely a right to file a fresh suit on the additional ground as well. To prevent the multiplicity of the proceedings and in the interest of justice, prayer of the petitioner to withdraw the present suit and file a fresh one on the same cause of action that is on the

ground of default in payment of rent and also on the ground of personal necessity needs to be allowed.

4. Record of the trial Court has already been summoned. The suit titled "Mrs. Yangzila Bhutiani of Development Area, Gangtok v. M/s. Nauratanmal Ashok Kumar & anr." vide Civil Suit No.04 of 2004 (renumbered as Eviction Suit No.1 of 2010) pending before the Court of the learned District Judge, Special Division-I, Sikkim at Gangtok is transferred to this Court and taken up on the board. The prayer of the petitioner (plaintiff) to withdraw this suit with liberty to file a fresh one on the same cause of action with addition to new ground of eviction i.e. personal necessity, is allowed.

5. The suit shall stand disposed of accordingly with liberty as prayed for. This civil revision is also rendered infructuous. No costs.