

(2003) 06 OHC CK 0005
In the Orissa High Court
Case No : Civil Revision No. 267 of 1999

Sri Ankul Chandra Satsang and Another	APPELLANT
Vs	
Radha Binod Goswami and Others	RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17

Citation : (2003) 06 OHC CK 0005

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Ashok Mukherji, G. Mukherji, P. Mukherji, S. Patnaik and J. Rath, for the Appellant; S.K. Das, P.K. Ghose, S.B. Jena, S. Behera and S.J. Nanda, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Petitioners are the Plaintiffs in Title Suit No. 31 of 1984 in the Court of Munsif, Kendrapara, i.e., Civil Judge (Jr. Division), Kendrapara, and the opposite party members are the Defendants. The suit was filed seeking the relief of permanent injunction. The Suit was dismissed on merit, and as against that the Petitioners preferred a Title Appeal and presently the same is pending as Title Appeal No. 9 of 1990 in the Court of Additional District Judge, Kendrapara. On 3.4.1997 two petitions were moved by the Petitioners, one under Order 41, Rule 27, CPC and the other under Order 6, Rule 17, CPC As per the impugned order the Court below on 15.5.1999 allowed the application under Order 41, Rule 27, CPC As stated at the Bar, that order has not been challenged by either of the parties. So far as the application for amendment of the plaint is concerned, learned Additional District Judge on due consideration of the proposed amendment rejected the same on the ground that effect of allowing the amendment would result in a de novo trial and that, there is no bonafide in the prayer for amendment of the plaint. That order is impugned in this revision.

2. It appears from paragraph-2 of the impugned order that vide the concerned

amendment Plaintiffs wanted to change the whole Khata Number of the disputed property, addition of the prayer of declaration of title, confirmation of possession and alternatively for recovery of possession, relying on certain documents and to change the valuation of the suit from Rs. 1000/- to Rs. 4,500/-. Defendants/ Respondents objected to the prayer for amendment on the ground of an attempt by the Plaintiff to oust the jurisdiction of the Civil Judge (Jr. Division), to introduce new case and to seek for a de novo trial on the self-same issues. As noted above, for the reasons indicated, the appellate Court rejected the prayer for amendment.

3. Learned Counsel for the Petitioners argued that the amendment was formal in nature as well as it is necessary for the just decision in the case and therefore refusal to the prayer for amendment shall result in failure of ends of justice. He further argued that technicality should not stand on the way of advancement of substantial justice and on the mere apprehension of a de novo trial a just relief by way of allowing the amendment should not have been refused by the Court below. In that respect he relies on the cases of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and Braja Kishore Sahu and Others Vs. Smt. Sailabala Sahu and Others, .

4. Learned Counsel for the opposite parties on the other hand distinguishing the ratio laid down in the above cited decision and arguing relating to their non-applicability to the present case, also relied on the case of Jagannath Sahoo and Others Vs. Labanya Dei and Others, , in support of the impugned order. He argued that if the method adopted by the Petitioners is to be followed, then there is no end to a litigation and after contested disposal of a suit or appeal the unsuccessful party can go on patching up the lacunae and deficiencies in his case by resorting to amendments. Accordingly he argued that such a practice will be against the interest of justice and it can never be regarded in furtherance of the ends of justice.

5. In the case of Jai Jai Ram Manohar Lal (supra) the mis-description of the name of the Plaintiff was sought to be corrected by amending the plaint, and that being opposed by the opponent the Apex Court held that:

all amendment should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties unless by permitting the amendment injustice may result to the other side.

In that context, their Lordships have further observed that:

the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.

6. Learned Counsel for the Petitioners referred to and relied on the following passage from the case of Braja Kishore Sahu (supra).

It is fundamental that a true owner or a person having possessory title can maintain a suit for injunction against a trespasser. If the Defendant refuses his

claim and asserts his own title, then determination of the question on title becomes necessary and in that case Plaintiff may amend his pleading and seek for a declaration of title or else the Court will have no other alternative but to dismiss the suit, the reason being that in a suit for injunction question on title cannot be gone into and decided.

In that case the dispute between the parties was that Plaintiffs claimed exclusive right, title, interest over Schedule "A" and "B" properties, sought for a permanent injunction restraining the Defendants from entering upon the Schedule "A" property and for a mandatory injunction to recover possession of the Schedule "B" property from the possession of Defendant No. 1. In her written statement Defendant No. 1 claimed title to the suit land along with the Plaintiffs and alternatively pleaded relating to possessory title for being in possession of the suit property for more than 12 years. Plaintiff's suit was decreed by the trial Court and that decree was reversed by the appellate Court. While noting such fact, the above quoted passage was noted in the cited decision. In that case (Second Appeal) posted with such factual and legal position Plaintiff moved for amendment of the plaint proposing insertion of additional fact relating to title and in support of the plea of recovery of possession. After consideration of the same, Hon'ble Judge held that:

This plea of the Plaintiffs, in my opinion, is after-thought and if the same is accepted, it would altogether change the nature and character of the suit and therefore, I am not inclined to allow the amendment of the pleadings as sought for.

Therefore, reading the entire decision of the above cited case, this Court finds that the ratio in that case does not help the Petitioners.

7. In the case of Jagannath Sahoo (supra), it was held by this Court that an amendment should not be allowed if allowing of such amendment would result in framing of new issues and opening the flood gates for fresh adjudication by introduction of further evidence on new facts and issues. Under such circumstance the order rejecting the amendment application was upheld.

8. Being abreast of the aforesaid principle and keeping in view the facts and circumstances involved in this case, this Court finds that after a due deliberation on factual as well as legal aspect the Court below has rejected the prayer for amendment. Indeed, procedural law is hand made to serve the cause of justice. Therefore, where there is presence of bonafide, a lacuna which is not intentional, a move or a motion which is not backed by malafide or having the effect of over-reaching the decision of the Court already made on the basis of the existing pleadings and the evidence, then such application for amendment can be considered. Similarly, where the Court finds that amendment of pleading as proposed by one of the parties is necessary to adjudicate the real question in controversy between the parties, then mere delay in bringing such motion may not be a ground to refuse the prayer for amendment. On the other hand, if after

being conscious of the case of the rival party a litigant without correcting the pleading at appropriate stage carries on the litigations and seek for amendment without bona fide after an adjudication against him so as to wriggle out from the situation and attempts to introduce new facts or evidence by seeking for a de novo or further trial on new issue, then in such cases the prayer for amendment should be refused because ends of justice must fulfil the sense of justice, which is equal to both the parties.

9. In the present case since the application for amendment has been rejected by the Court below on good ground and in that respect he has not committed illegality, perversity or jurisdictional error, therefore this Court declines to interfere with the impugned order.

Accordingly the Civil Revision is dismissed. No Cost.