

(2013) 03 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No. 5966/2012 (GM-CPC)

Sri. Lakshmanna

APPELLANT

Vs

Smt. Venkatalakshamma and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 03 KAR CK 0057

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Judgement

A.N. Venugopala Gowda, J.—The petitioner has instituted a suit against the respondents to pass a judgment of declaration and perpetual injunction in respect of the property described in the schedule of the plaint. The respondents being the defendants in the suit have filed written statement and have sought dismissal of the suit. Issues were raised based on the pleadings. Petitioner filed I.A. 9 seeking permission to amend the plaint in the manner stated in the schedule of I.A. 9 and the same was opposed by the defendants. Learned Trial-Judge by an order dated 13.12.2011 has dismissed I.A. 9 on the grounds that, it is belated and has been filed just to fill up the lacuna and improve the case of the plaintiff in accordance with the defence taken by the defendants. Reliance was placed on a decision reported in Smt. Shobha Surendar and Sri. Y.S. Surendar Murthy Vs. Sri. C.R. Nagaraja Setty and Others to hold that an application filed for amendment of the plaint after commencement of trial cannot be allowed.

2. Sri. A. Nagarajappa, learned counsel submitted that the plaintiff is an illiterate person having no worldly knowledge and could not instruct his counsel to mention the new Sy. No. 50, instead of old Sy. No. 47 and that there is also an inadvertent typographical error. He submitted that neither there would be any change in the nature of the suit nor will the amendment introduce any new cause of action and the proposed amendment being just and necessary to decide all questions which have arisen for consideration, I.A. 9 ought to have been allowed

and the order passed by the Trial Court, impugned herein being otherwise, warrants interference.

3. Sri. Y.R. Sadasiva Reddy, learned advocate appearing for the respondents, on the other hand supported the view taken by the Trial Court and sought dismissal of the writ petition.

4. I.A. 9 is at Annexure-C to the writ petition. Two amendments have been sought. The first one relates to the number appearing in para 2 of the plaint i.e., "287/1978-79" was sought to be corrected as "257/1978-79" and to add a paragraph showing that "the survey no. having undergone a change while resurveying as 50 instead of 47, the plaint schedule to be corrected as Sy. No. 50 instead of Sy. No. 47".

5. Considering the rival contentions and the record of the writ petition, only point for consideration is, whether the petitioner has made out a case for amendment of the plaint in terms of the provision under Order VI Rule 17 of CPC i.e., the amendment prayed in I.A. 9?

6. From a reading of the provision under Rule 17 of Order VI of CPC, it is clear that parties to the suit can be permitted to amend their pleadings at any stage of the proceedings of the suit for the purpose of determining real questions in controversy between them. An amendment sought prior to commencement of trial can be liberally permitted. If the application is made after commencement of trial, the Court has to find out as to whether, in spite of due diligence, the party could not have sought proposed amendment prior to the commencement of trial. The main purpose of permitting the amendment is to minimize the litigation i.e., avoid multiplicity of proceedings.

7. Petitioner has filed the suit and respondents have filed written statement and issues have been raised. The suit is at the stage of trial. The amendment prayed is correction of a number appearing in para 2 of the plaint and the survey number in the plaint and its schedule. Trial Court has failed to notice that the plaintiff has not sought the change in extent of property or the boundaries. The description of the property in the schedule of the plaint other than the survey number remains unchanged. The amendments proposed are in the nature of arithmetical corrections. The proposed amendments would not alter the claim or the cause of action which led to the filing of the suit.

8. There is misdirection adopted by the Trial Court while passing the order on I.A. 9 and in dismissing the same. However, on account of the belated application filed and the delay caused in the decision of the suit, the plaintiff should be put on terms i.e., compensate the defendants for the delay in trial and disposal of the suit.

9. In the case of Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, , Apex Court has held that, if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be

allowed. The proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and the application ought to have been allowed in as much as, there is neither any change in the claim nor substitution of a new property much less introduction of any new cause of action. The impugned order is pedantic, improper, unreasonable and hence, unsustainable.

In the result, writ petition is allowed and the impugned order is quashed.

I.A. 9 filed in the Trial Court is allowed subject to the plaintiff paying to the defendants cost of Rs. 2,500/-. Let the cost be deposited in the Trial Court and the amendments be carried out within two weeks from the next hearing date of the suit. Defendants are permitted to file additional written statement, if any, within a period of two weeks from the date the amendment is carried out and copy of the amended plaint is served on the learned advocates appearing for the defendants.

Trial Court is directed to decide the suit expeditiously.

No costs.