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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

ASHARFI LAL — Appellant

Vs.

SPECIAL ADDITIONAL DISTRICT JUDGE AND OTHERS — Respondent

(Before : Sri Narayan Shukla, J)

Writ Petition No. 3859 (M/S) of 2005

Decided on : 14-03-2013

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

A. Civil Procedure Code, 1908 — Order 6 Rule 17 — Amendment of plaint — Application for amendment for seeking declaratory relief rejected by trial court — Suit for permanent injunction based on plea of exclusive ownership and possession — Proposed amendment seeks declaration of ownership and possession over the same property — Plaintiff's initial suit claimed sole ownership through partition and subsequent construction — Facts supporting ownership and possession were already pleaded in the unamended plaint — Amendment seeking declaration of title does not change the nature of the suit if the factual basis for the claim is already present in the original plaint — Amendment should be allowed if it subserves the ultimate cause of justice and avoids further litigation — However, if the proposed amendment introduces new facts not previously disclosed in the plaint, or if the relief sought is barred by limitation, the application may be dismissed. (Paras 3, 4, 5, 6, 7, 8, 9, 10, 11)

JUDGMENT

Shri Narayan Shukla, J.

Heard Mr.Rajesh Shukla, learned counsel for the petitioner as well as Mr.Brijesh Kumar Kuldeep, learned counsel for the opposite party Nos.2 and 3.

Through the instant writ petition the petitioner has challenged the order dated 24.2.2005, passed by the Special Judge E.C.Act, Bahraich, whereby the petitioner's application for amendment numbered as application Ka/113 under Order 6 Rule 17 CPC for amendment of the plaint has been rejected.

By means of order impugned the petitioner's application for amendment has been rejected on the ground that through the proposed amendment the petitioner has tried to change the nature of the suit. The petitioner has filed the suit for permanent injunction against the respondents not to interfere in his peaceful use and possession of the house in question as well as its appurtenant land.

Through the plaint the petitioner has claimed himself the sole owner of the house in dispute. He got it from his father by way of partition. The petitioner/plaintiff in the suit has stated that earlier the land over which the house is constructed was vacant and it was being used for tethering the cattle. After partition he constructed the house over there and now he uses the appurtenant land of the house for tethering the cattle and also on the occasion of functions of the family. It is stated by him that the defendants are not members of his family and they have no concern with the house or its appurtenant land nor had they possession over there at any point of time, but now they are threatening the petitioner to dispossess him from the land in dispute forcibly.

Through the proposed amendments he has sought the relief to declare him as owner and in possession of the house and its appurtenant land by inserting some new facts also in the plaint.

The learned counsel for the petitioner submits that the nature of amendment is explanatory. Moreover he has right to claim the relief of declaration of title in addition to the relief of permanent injunction as has been held by the Hon'ble Supreme Court in the case of Abdul Rehman & another versus Mohd.Ruldu and others, Civil Appeal No.7043 of 2012 arising out of SLP (C) No.6324 of 2008.

Upon perusal of the facts of the aforesaid case, I find that the facts which were the basis of the proposed amendment in relief had already been inserted in the unamended plaint, therefore, the Hon'ble Supreme Court held that once the relevant facts were specifically stated in the unamended plaint, the amendment seeking incorporation of relief of declaration does not change the nature of the suit. The Hon'ble Supreme Court also discussed of its one earlier judgment i.e. Pankaja and another versus Yellapa (Dead) by LRs and others, 2006 SCC 415, in which it 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. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

He further submitted that the proposed amendments are necessary to be inserted for

determination of real question of controversy as well as effective adjudication of the case, which is permissible in the eye of law. In support of his submission he cited another decision of the Hon'ble Supreme Court i.e. Revajeetu Builders and Developers versus Narayanaswamy and sons and others, reported in (2009) 10 SCC 84.

Upon perusal of the proposed amendment, I find that the petitioner has sought the relief of declaration of his title on the basis of the facts, which were made available in 1993 through the written statement filed by the defendants asserting their right over the land in dispute, but he did not take any step for amendment of the plaint till 2004, rather he filed the instant application on 3rd of February, 2005.

In the light of the aforesaid facts, I am of the view that the said relief is also barred by time.

Thus it is also obvious that the petitioner's proposed relief is based on some new facts which were not disclosed in the plaint, therefore, I am of the view that the judgments of Hon'ble Supreme Court cited by the petitioner do not help him.

In the result the writ petition is dismissed.