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Court : Karnataka Dharwad

Decided On : Jan-02-2015

Judge : A.S. Bopanna

Appeal No. : Writ Petition No. 110126 of 2014 (GM-CPC)

Appellant : Mugutsab and Others

Respondent : Khansab

Judgement :

(Prayer: This Writ Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India Praying To Quash The Order Dated 19/09/2014 On I.A.No.3 In O.S.No.41/2012 Passed By The Civil Judge And Jmfc, Bailhongal Sifing At Kittur As Per Annexure-F Herein And Consequently By Dismissing The Said I.A.No.3 Filed Under Order 6 Rule 17 Of Cpc By The Respondent Herien.)

1. The petitioners are the plaintiffs in O.S.No.41/2012. In a suit filed by the plaintiffs seeking declaration of ownership in respect of the suit schedule property, the defendant filed an application in I.A.No.III under Order VI Rule 17 of the Code of Civil Procedure seeking amendment to the written statement filed in the said suit. The Court below by the order impugned dated 19/09/2014, has allowed the application. The plaintiffs claiming to be aggrieved are before this Court.

2. Heard the learned counsel for the parties and perused the order passed by the Court below and also perused the written statement and the nature of the

amendment that has been sought. The application is available at Annexure "D to the petition.

3. A perusal of the same would indicate that the amendment sought is extensive.
4. The learned counsel for the plaintiffs/petitioners would contend that the application at such a belated stage and more particularly being contrary to the averments which have been made in the original written statement ought not to have been permitted. Learned counsel for the respondent has however relied on the decisions of the Hon'ble Supreme Court which in fact has been referred to by the Court below in its order.

Firstly with regard to the legal aspect relating to the amendment, the very principle as applicable to the amendment of a plaint would be applicable even in case of amendment to written statement. However, from the position of law, there cannot be any doubt that the contentions which are contrary to one another can also be urged in the written statement. Despite the said position, what is necessary to be noticed in the instant case is the stage at which the application had been filed and the nature of amendment that has been sought.

5. At the first instance, when the written statement was filed, the defendant had set up title in himself to the property, which is the subject matter of the suit and to which the plaintiffs claim their right. Issues were accordingly framed. Based on the same, the plaintiffs have tendered evidence. It is only at that stage, the instant application has been filed. In that regard, the original written statement was filed on 01/06/2012 and the evidence of the plaintiffs commenced on 17/11/2012, while the application for amendment was filed on 15/03/2014.

6. At the first instance, when the defendant had set up title to the property and in that view, when the plaintiffs had tendered evidence, at that stage to claim right to the property by way of adverse possession, it is totally contrary to the plea which has been taken by the defendant, That apart, from the decisions which had been cited and taken note of by the court below, it is seen that in the said facts there were certain aspects which have been considered by the Hon'ble Supreme Court and in that light, the amendment prayed was allowed. In the instant case, a

perusal of the affidavit accompanying the application seeking amendment would indicate that except the defendant referring to his old age and that his daughter was prosecuting the suit on his behalf, there is absolutely no averment with regard to the due diligence exercised by the defendant which is one of the primary aspects which requires consideration as per the provisions contained under Order VI Rule 17 of the CPC. In that view, if the amendment as sought is perused, it is almost in the nature of substituting the written statement which had been filed at the first instance. The law is also well established that though contrary contentions could be taken in the written statement, certain admissions which are made cannot be taken away. In that light, if the petitioners were to contend with regard to the ownership at the first instance and take an alternative contention of adverse possession, the parties would have noticed the contention and accordingly, an issue would be framed and the evidence would also be led. At this stage, when the plaintiffs have already tendered evidence and trial is commenced, at this belated stage, an application ought not to have been allowed by the court below.

7. In that view of the matter, the order dated 19/09/2014 impugned herein is set aside. Consequent thereto, the application in I.A.III filed before the court below seeking amendment to the written statement stands dismissed.

The petition is disposed of accordingly.

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