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Abdul Khalique Vs. Abdul Sattar and ors.

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Court : Guwahati

Decided On : Mar-08-2007

Judge : B.K. Sharma, J.

Appellant : Abdul Khalique

Respondent : Abdul Sattar and ors.

Advocate for Pet/Ap. : Mr. A.D. Choudhury

Disposition : Petition dismissed

Judgement :

B.K. Sharma, J.

1. This writ petition has been filed challenging the legality and validity of the order passed by the trial Court allowing the prayer for amendment of the plaint.

2. The petitioner is the defendant No. 1 while the respondent is the plaintiff in Title Suit No. 182/2002 pending before the learned Civil Judge (Junior Division) No. 1, Karimganj. The suit has been filed by the plaintiff respondent against the defendant-petitioner and the defendant No. 2/proforma respondent for declaration of right, title, interest and khas possession over the suit land. The defendant-petitioner filed the written statement and on the basis of the pleadings, the issues have also been framed.

3. When the matter was fixed for evidence of the plaintiff-respondent, he filed an application on 4.10.2004 under Order 6 Rule 17 read with Section 151 C.P.C. for amendment of the plaint. The defendant-petitioner filed objection to the prayer for amendment and upon hearing the parties, the trail Court has passed the impugned order dated 10.2.2005 allowing the amendment prayed for by the plaintiff-respondent. The impugned order reads as follows:

10.2.05 Advocate for both sides filed hazira. Ld. Counsel for the plaintiff vide petition No. 29/20 prayed for amendment of the plaintiffand the defendant vide petitioner 311/4 raised objection of the amendment sought by the plaintiff.

Heard learned Counsels for both sides. Ld. Counsel for the plaintiff submitted that if the amendment sought for would not be allowed the proper adjudication of the case would not be possible and on rejection of amendment prayer, he will suffer irreparable loss and injury.

On the other hand Ld. Counsel for the defendants we argued the matter at length on the statutory provision of Order 6 Rule 17 C.RC. that no application for amendment shall be allowed after the trial has commenced, unless the Court come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial'. He submitted that in the instant case if emphasis given to the word due diligence the amendment sought for by the plaintiff is out and out rejectable one and the prayer for rejection of the petition of the plaintiff.

Considering all these aspects as well as the submissions of Ld. Counsels for both sides and also keeping in view of the statutory provision of Order 6 Rule 17 CPC and the satisfying conditions of amendment namely (a) of not working injustice to the other side and (b) of being necessary for the purpose of determining the real question in controversy between the parties the prayer of amendment is allowed with a liberty to the defendant to file additional W/S (if any) Inform both sides. Plaintiff to amend the plaint.

Fix-9.3.05 for addl. W.S. (if any)

4. On perusal of the impugned order dated 10.2.2005, it is seen that the learned civil Judge has passed the order applying his discretionary jurisdiction. The amendment has been allowed considering the same to be necessary for the purpose of determining the real question in controversy between the parties. Liberty has also been granted to the defendant-petitioner to file additional written statement.

5. Mr. B.C. Das, learned Sr. counsel assisted by Ms. S. Roy and Md. F.U. Borbhuiyan appearing for the defendant-petitioner has submitted that the impugned order is beyond the jurisdiction of the learned Civil Judge and as such, liable to be interfered with. According to him, the trial of the suit, upon framing of the issues, having been commenced, the amendment could not have been allowed stating that the trial of the case has not started. He has placed reliance on two decisions of the Apex Court as reported in : [1957]1SCR370 (Harish Chandra Bajpai v. Triloki Singh) and : AIR 2005 SC2441 (Kailash v. Nanhku).

6. Mr. A.D. Choudhury, learned Counsel for the plaintiff respondent, on the other hand, placing reliance on the decision of the Apex court as reported in : AIR 2006 SC2832 (Baldev Singh v. Manohar Singh) submits that the trial having not commenced, the learned Civil Judge has rightly passed the impugned order. He has also placed reliance on the decision of the Apex Court reported in : [2002]SUPP2SCR397 (Sampath Kumar v. Ayyakannu). He further submits that since the amendment allowed shall not change the nature and character of the suit, the particular discretion exercised by the learned Civil Judge need not be interfered with.

7. I have given my anxious consideration to the submissions made by the learned Counsel for the parties as well as to the materials available on record. The impugned order has been quoted above and on perusal of the same, it appears that the amendment has been allowed in consideration of the provisions of Order 6 Rule 17 CPC and upon recording the satisfaction that the amendment is necessary for the purpose of determining the real question in controversy. According to the learned Counsel for the defendant-petitioner, the amendment ought not to have been allowed, the trial of the suit having been commenced upon

framing of the issues on the basis of the pleadings of the parties.

8. Order 6 Rule 17 C.P.C. provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. As per the proviso to Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9. As per the main provision of Order 6 Rule 17 CPC, the Court is empowered to allow the prayer for amendment at any stage of the proceedings. A restriction has been imposed by the proviso in terms of which the amendment shall not be allowed after the trial has commenced. However, an exception has been made to such restriction and the exception is, if the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial.

10. Both Harish Chandra Bajpai (supra) and Kailash (supra) are the decisions in respect of the election petitions and not pertaining to any civil suit. In Harish Chandra (supra), the Apex Court having referred to the fact situation involved in that case observed that the trial in that case must necessarily include the matters preliminary to the hearing, such as settlement of issues etc. In Kailash (supra), the Apex Court answered the question - 'Trial' of election petition, when it commences It was in that context a reference was made to the civil suit and it was observed that the trial begins when issues are framed and the case is set down for recording of evidence. Apart from the fact that both the cases pertain to election petition, the Apex Court was also not called upon to answer the issue as in the instant case.

11. In Baldev Singh (supra), the Apex Court dealing with Order 6 Rule 17 CPC in connection with the amendment of pleadings allowed the prayer for amendment as the parties were yet to file their documents. It has been observed that the commencement of trial must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses etc. The relevant observation of

the Apex Court is quoted below:

17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. 11 appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered direction to the Court to allow an amendment of the written statement at any stage of the proceedings.

12. In the instant case, although issues have been framed, but the trial in its real sense has not started. The matter is now fixed for evidence. It was at that stage, the prayer for amendment was made and the learned Civil Judge applying the discretion vested on him and having regard to the facts and circumstances involved in the suit, has allowed the prayer for amendment. It has been observed that such amendment is necessary for the purpose of determining the real question in controversy. It is in this context the learned Counsel for the respondent has placed reliance on the decision of the Apex Court in Sampath Kumar (supra). That was also a case relating to amendment of pleadings. Emphasizing on the need for liberal approach and the necessity to allow the amendments leading to determination of real question in controversy between the parties, the Apex Court observed as follows:

9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and

seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground form refusing a prayer for amendment.

13. The whole emphasis on the part of the petitioner is that since the trial in the suit has commenced, the learned Civil Judge ought not to have allowed the amendment. It is true that in Kailash (supra), the Apex Court has made a reference to the Civil proceeding observing that the trial commences with the farming of issues but the same will have to be understood in the context of Order 6 Rule 17 CPC. Order 18 CPC records the provisions relating to hearing of the suit and examination of witnesses. Various provisions have been made relating to beginning of the hearing, the statement and production of evidence etc.

14. In the instant case, apart from framing of issues, there has not been any progress in the suit. Since the defendant-petitioner has been granted liberty to file additional written statement, it will also be open to frame additional issues, as may be raised by the defendant-petitioner.

15. The learned Civil Judge has allowed the amendment upon recording his satisfaction regarding conditions precedent of allowing such amendment. It has also been recorded that the amendment is necessary for the purpose of determining the real question in controversy between the parties. I am of the considered opinion that there has not been any error of jurisdiction in passing the impugned order dated 10.2.2005. The amendment prayed for will also not change

the character and nature of the suit. The proviso to Order 6 Rule 17 CPC also does not create absolute bar for allowing the amendment after comencement of trial.

16. Considering all the above, I do not find any infirmity in the impugned order dated 10.2.2005 passed by the learned Civil Judge (Junior Division) No. 1 Karimganj in Title Suit No. 182/2002 allowing the amendment prayed for by the plaintiff-respondent.

17. In view of the above the writ petition is dismissed. Interim order passed on 79.4.2005 stand vacated. Registry shall send down the case record immediately, if has been received from the Court below. A copy of this order may also be sent to the Court below.

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