

Ram Kishan Vs. Ratan Singh and ors.

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Court : Allahabad

Decided On : Feb-16-2006

Reported in : 2006(2)AWC1819

Judge : Umeshwar Pandey, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : C.M.W.P. No. 8390 of 2006

Appellant : Ram Kishan

Respondent : Ratan Singh and ors.

Advocate for Def. : S.C. Mandhyan, Adv. and ;Satish Mandhyan, S.C.

Advocate for Pet/Ap. : Ratnesh Kumar Pandey, Adv.

Judgement :

ORDER

Umeshwar Pandey, J.

1. Heard learned Counsel for the parties.

2. In this petition the order of revisional court dated 1.12.2005 is under challenge. The revisional court has confirmed the order of trial court dated 25.3.2004 permitting an amendment in the plaint for adding relief of declaration in regard to a

decree passed in earlier Suit No. 786 of 1996.

3. In the present Suit No. 26 of 1999 the respondent plaintiff No. 1 had moved for amendment in the plaint under Order VI, Rule 17, C.P.C. praying for addition of the aforesaid relief and also certain facts in regard thereto. The earlier Suit No. 786 of 1996 was between respondent Nos. 7 and 9 on one side as plaintiffs and 6 and 8 on the other side as defendants. The present petitioner and the respondent No. 1 were nowhere as parties to that suit. Obviously, any decree passed in the earlier suit are not concerning the present petitioner and respondent No. 1.

4. Learned Counsel appearing for the petitioner while replying to the query of the Court as to how he is concerned with decree passed in the earlier suit, nothing satisfactory has come forth. The same query when made to the respondents' counsel no satisfactory answer has come from him as to how he is aggrieved against the decree passed in Suit No. 786 of 1996. Learned Counsel has simply tried to satisfy the Court saying that the said decree is a piece of evidence available to the defendants of this suit for substantiating their claim over the property in question and in that context he has relied upon a case law of Tirumala Tirupati Devasthanams v. K.M. Krishnaiah, 1998 (2) AWC 1240 (SC): 1998 (32) ALR 740. It is true that the decree passed in earlier suit is a piece of admissible evidence but what would be its value is a heavy weight question before the Court when It is to be relied upon against the claim of the other party (respondent No. 1/plaintiff). Since the decree in earlier suit between respondent Nos. 6 and 8 and 7 and 9 is not binding upon the plaintiffs of the present suit an addition of such relief of declaration about the said decree as being null and void in the plaint is hardly warranted. If the plea taken in written statement by the defendants of this suit, that by virtue of decree passed in earlier suit they are the owners in possession over the disputed property that may be replied by filing a replication. In this view of the matter, the amendment, which has been incorporated in the plaint, is not such, which should have reasonably been permitted by the Courts below and to that extent the orders do require interference in the present writ petition.

5. In the aforesaid facts and circumstances, this writ petition is disposed of with a direction to the Courts below that the amendment, which has been incorporated by

way of incorporating additional relief in the plaint, shall be scored out and the plaintiff respondent No. 1 shall be given an opportunity of filing a replication in the trial court and then to further proceed in the suit in accordance with law.

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