

Mishri Singh Vs. Iiird Additional District Judge and ors.

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Court : Allahabad

Decided On : Dec-05-2002

Reported in : 2003(4)AWC2889

Judge : Rakesh Tiwari, J.

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

Appeal No. : C.M.W.P. No. 38213 of 1997

Appellant : Mishri Singh

Respondent : Iiird Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Deo Raj, Adv.

Disposition : Petition allowed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the petitioner and the respondents.

2. In this petition the judgment and order dated 3.10.1997 passed by the IIIrd Additional District Judge, Bijnor, in Civil Revision No. 4 of 1997, dismissing the

revision of the petitioner, by which the order and judgment dated 13.12.1996 passed by the 1st Additional Civil Judge (Junior Division) Bijnor, dismissing the amendment application of the petitioner was upheld, has been challenged.

3. The brief facts giving rise to this petition are that a Civil Suit No. 308 of 1988 was filed against the respondent No. 3 in the Court of Civil Judge (Junior Division) Bijnor and the same was transferred to the Court of respondent No. 2. In the written statement (Annexure-3 to the writ petition) filed by respondent No. 2, the defendant in the suit, denied the existence of passage in dispute stating that the petitioner had another approach to his Haveli as per Schedule Ka to the suit from a passage existing towards east, adjacent to the Haveli of Genda and Khawani. The petitioner along with the plaint had moved an application for an ad interim injunction and had also applied for issue of a Commission for preparation of the site plan showing the Haveli along with the land appurtenant to the house and sahan. The application of the petitioner was allowed and Commission was issued in the name of Court Amin, who visited the site on 5.8.1988 and submitted his report dated 27.8.1988. The report of the Civil Court Amin was not clear and as such an objection was filed by the petitioner on 30.7.1990. On the basis of the pleadings of the parties the trial court framed the following three issues :

'(1) Whether there is any passage of Haveli of plaintiff towards north as alleged in the plaint?

(2) Whether the rainy water and water of daily use of the plaintiff's Haveli passes towards north as alleged in the plaint?

(3) To what relief, if any, is the plaintiff entitled?'

4. In the meantime an application was moved on behalf of the petitioner under Order VI, Rule 17. C.P.C. on 16.9.1996. The respondent No. 3 filed an objection dated 9.12.1996 to the amendment. The amendment application was rejected vide order and judgment dated 13.12.1996 by the 1st Additional Civil Judge (Junior Division) Bijnor. Aggrieved by the order and judgment dated 13.12.1996, the petitioner filed a revision before the District Judge, Bijnor, which was registered as Civil Revision No. 4 of 1997. The revision was also dismissed by the order and

judgment dated 3.10.1997 passed by the respondent No. 1 vide Annexure-8 to the writ petition.

5. The contention of the counsel for the petitioner is that while rejecting the application for amendment the courts below failed to consider that the amendment was necessary for determination of all controversies between the parties and further that no additional evidence was required in the case. He submits that from a perusal of Annexure-7 to the writ petition, it is apparent on the face of record that the order of respondent No. 2 is not in accordance with law. It is further contended that the revision has been dismissed without appreciating the arguments advanced on behalf of the petitioner and apart from it the revisional court has failed to consider the provisions of Order VI, Rule 17, C.P.C.

6. At the time of admission this Court passed the following order on 25.11.1997 :

'Issue notice.

Until further orders, further proceedings in Original Suit No. 308 of 1988 pending in the Court of 1st Additional Civil Judge (Junior Division) Bijnor, shall remain stayed.'

The proceedings of the courts below are in abeyance for the last almost five year. The power to allow amendment is wide and can be exercised at any stage of the suit in the interest of justice. It is settled legal position that amendment cannot be claimed as a matter of right under any circumstance, but, it is equally settled principle of law that a Court, while deciding the prayer for amendment of the plaint, should not adopt hyper-technical approach.

7. The Apex Court in the case of B.K.N. Pillai v. P. Pillai and Anr., JT 1999 (10) SC 61, has held that technicalities of law are not to be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the proceedings to avoid uncalled for multiplicity of litigation, particularly in cases, where the other party can be compensated. It has been held in the aforesaid case that the general rule is the liberal approach to the amendment and the mere delay in filing the application for amendment are not valid grounds for rejecting an application for amendment.

8. The Courts are not only under a bounden duty to see that justice -is done but are also under bounden duty to see that injustice is not done to any party.

9. In the instant case, the amendment proposed is necessary to resolve the real controversy between the parties and does not require any additional evidence. In any case, the petitioner has submitted before the Court that he has no objection in case the trial court even otherwise permits the respondent No. 3, the defendant in the suit, to lead the evidence.

10. In this view, it would be in the interest of justice to allow the petitioner to amend the plaint by proposed amendments, which are necessary for determination of the real controversy in the suit. Since no additional evidence etc. is required the proposed amendment would not alter the nature of the suit or substitute any new cause of action and no prejudice will be caused to the other side, which cannot be compensated by costs.

11. For the reasons stated above, the petition is allowed. The impugned orders dated 13.12.1996, passed by the 1st Additional Civil Judge (Junior Division) Bijnor (Annexure-7 to the writ petition) and the order and judgment dated 3.10.1997 passed by the IIIrd Additional District Judge, Bijnor (Annexure-8 to the writ petition) are quashed. The interim order dated 25.11.1997 is vacated. The petitioner is permitted to make necessary amendments in the plaint within a period of 15 days from the date of production of a certified copy of the order of this Court before the trial court on payment of costs of Rs.500. In view of the fact that proceedings in the suit have remained stayed for almost last five years, it is directed that trial court may now proceed to decide the suit as expeditiously as possible.