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Gitadevi Agrawal Vs. Ram Chandra Devta

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Court : Orissa

Decided On : Oct-17-2003

Reported in : 97(2004)CLT161

Judge : L. Mohapatra, J.

Acts : Constitution of India, 1950 - Articles 226 and 227; Code of Civil Procedure (CPC) , 1908 - Order 6, Rule 17

Appeal No. : W.P.(C) No. 7625 of 2003

Appellant : Gitadevi Agrawal

Respondent : Ram Chandra Devta

Advocate for Def. : S.K. Acharya, ;A.K. Nayak, ;M.K. Pande and ;S.K. Swain, Advs.

Advocate for Pet/Ap. : S.C. Lal and ;S. Lal, Advs.

Disposition : Application dismissed

Judgement :

L. Mohapatra, J.

1. Defendants 1 and 2 are the petitioners before this Court. The prayer for amendment of the written statement having been partly allowed and partly rejected

by the learned Civil Judge (Junior Division), Bargarh vide order dated 4.5.2002 in Title Suit No. 26 of 1996 and the revision carried against the said order having dismissed as not maintainable, the petitioners have approached this Court in the present writ application.

2. The suit was filed for declaration that the plaintiff-opposite party is owner in possession of the suit land and the alleged sale of the suit land in favour of defendants, if any, is not binding on him and also for a decree of permanent injunction restraining the defendants-petitioners from going over the suit land and from causing any illegal overt act thereon. Stand of the petitioner in the written statement is that they and their predecessors-in-interest were in possession of the suit land along with other land since time immemorial and the plaintiff was possessing his land as well as some lands belonging to the State Government having amalgamated the same with his own land. It is specific case of the defendants-petitioners that the plaintiff was never in possession of the suit land. Further case of the defendants-petitioners is that their predecessors-in-interest were possessing the suit land and after coming into possession the defendants had raised construction up to plinth level and have spent considerable amount in such construction. The defendants-petitioners claim title over the suit land by way of adverse possession.

3. In the application for amendment of the written statement, the defendants-petitioners sought for three amendments. First amendment was to delete paragraphs 7 to 16 from the original written statement and the second amendment was in relation to amendment to the prayer in the cross suit. The third amendment relates to insertion of two paragraphs after paragraph 4 of the written statement. The proposed amendment runs as follows :

'That the defendant No. 2 has always claimed that she has purchased the suit land 0.01 decimal along with plot No. 462- A0.04 vide regd. Deed of sale No. 3504 dtd. 29.9.84 from Tapaswini Padhan and others and took delivery of possession of the same. She also constructed a boundary wall but the plaintiff damaged a portion of the same. The allegation of the plaint that the suit land plot No. 463-A0.01 correspond to the purchased land of the plaintiff or as described in the plaint is

false and hence denied.

Further the order passed by the Consolidation Officer is void and not binding upon the defendant No. 2. The same has been obtained behind the back of the defendant No. 2. The major settlement record is also wrong in respect of the suit land. The same does not give title to the plaintiff.'

Plaintiff-opposite party objected to such amendment solely on the ground that claim of title in the written statement is on the basis of adverse possession and by way of amendment in the written statement the defendants intend to claim title on the basis of registered sale-deed and therefore the proposed amendment changes the nature and character of the plea taken by the defendants and should not be allowed. Learned Civil Judge (Junior Division), Bargarh allowed the proposed amendment Nos. 1 and 2, but turned down the proposed amendment so far as paragraph-3 thereof is concerned. Ground of rejection of the said proposed amendment is that the same shall change nature and character of the suit land. Challenging the said order the petitioners filed revision before the learned Additional District Judge, Bargarh in C.R.P. No. 1 of 2002 and the revision was dismissed as not maintainable in view of the amendment of the Civil Procedure Code. Thereafter, this writ application has been filed.

4. Shri S.C. Lal, learned counsel appearing for the defendants-petitioners submitted that the question as to whether defendants have acquired title by virtue of sale deed or not has to be decided in view of the averments made in para-2 of the plaint. According to Sri Lal, the proposed amendment is only explanatory in nature and does not change nature and character of the suit. Learned counsel appearing for the plaintiff-Opposite party, on the other hand, submitted that the defendants having claimed title by way of adverse possession in the original written statement cannot be allowed to take different plea in the proposed amendment and therefore the learned Civil Judge has rightly rejected the petition.

5. Shri Lal, learned counsel appearing for the petitioners referred to a decision of this Court in the case of Nabaghana Baral v. Kelu Charan Nayak and Ors., reported in 1989 (II) OLR 438 and submitted that mere elucidation of certain facts which are likely to constitute evidence does not amount to change nature and

character of the suit. Such elucidation may be necessary for just and proper decision of the suit and therefore the proposed amendment should have been allowed by the Court below. Learned counsel appearing for the plaintiff-opposite party referred to a decision of the Apex Court in the case of Heeralal v. Kalyan Mal and Ors., reported in AIR 1998 SC 618 and submitted that the proposed amendment amounts to withdrawal of admission made in the written statement and therefore should not be allowed. Learned counsel also referred to a decision of this Court in the case of Nakula Behera and Ors. v. Damodar Swain, reported in AIR 1991 Orissa 101 and stated that once a particular plea is taken in the written statement the same cannot be changed by way of amendment and new case cannot be introduced.

6. Keeping in mind the citations relied upon by the learned counsel appearing for both parties, facts of the case should be looked into. In para-2 of the plaint, the plaintiff has specifically averred that the defendant claim to have purchased the suit land since 29.9.84, but the same was never acted upon and no title passes thereby in favour of the defendant, The alleged sale claimed by defendant is a mere paper transaction. Though no specific reply has been given to this averment, the defendants in the original written statement claim title of the suit land by way of adverse possession and they were absolutely silent about sale-deed on the basis of which now they claim title. Even if there is absolutely no denial by the defendants to the averments made in para-2 of the plaint, it may be necessary for the Court to decide that question also and therefore the proposed amendment, in my view, claiming title on the basis of sale-deed was not necessary. Moreover, the plaintiff has also prayed for a declaration that the alleged sale in favour pf the defendants is not binding on him. Therefore, the trial Court has to frame an issue in this regard and answer the same.

In view of the above, I do not find any reason for interfering with the impugned order and accordingly the writ application is dismissed.

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