

Samarjit Singh Vs. Raj Kumar Bhasin

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Court : Delhi

Decided On : Sep-29-1999

Reported in : 1999VIAD(Delhi)631

Judge : M.K. Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17 - Order 7, Rrule 11

Appeal No. : C.R. No. 1352/1997

Appellant : Samarjit Singh

Respondent : Raj Kumar Bhasin

Advocate for Def. : Ms. Anjana Gosain, Adv.

Advocate for Pet/Ap. : Ms. Rekha Aggarwal, Adv

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. The present revision petition has been filed by the petitioner against the order dated 1.11.1997 passed by the Civil Judge. Delhi in Suit No. 159/1995 dismissing the application of the petitioner seeking for amendment of the plaint. The petitioner as plaintiff instituted a suit in the court of the Senior Civil Judge, Delhi seeking for

a declaration that he is the owner, title holder of the suit property and also sought for permanent injunction restraining the respondent from disposing of the same. The respondent filed their written statement contesting the aforesaid suit. Subsequently, an application was filed by respondent/defendant contending inter alias that admittedly the plaintiff is not in possession of the suit property and therefore, the relief of permanent injunction could not be availed of by him. It was also stated that the defendants are in continuous possession and therefore, the plaintiff could not have filed the suit by affixing Rs. 20/- only as court fee for declaration only, for in order to avail appropriate relief he is to file a suit for possession by affixing and valorem court fee on the market value of the property. The respondent/defendant therefore, sought for rejection of the plaint on that ground.

2. On receipt of the aforesaid application the petitioner herein filed an application under Order 6, Rule 17 CPC seeking permission to amend the plaint for appropriate and final adjudication of the issues arising between the parties. It was stated in the said application that in the suit instituted by the plaintiff he is also entitled to seek for consequential reliefs for delivery of possession and for recovery of damages / mesne profits also. The petitioner also stated that he is ready and willing to pay ad valorem court fee on the aforesaid reliefs as sought for now . The aforesaid application was opposed by the respondents and the trial court after hearing the parties dismissed the application holding that the proposed amendment would certainly change the subject matter of the suit, the nature of the claim as well as would cause injury and irreparable injustice to the respondent.

3. I have heard the learned counsel appearing for the petitioner as also the counsel appearing for the respondents. The suit was originally instituted by the petitioner as plaintiff seeking for a declaration that he is the owner / title holder to the suit premises and also for a permanent injunction for restraining the respondents from disposing of the suit premises. From the pleadings of the parties it transpires that the plaintiff was not in possession of the suit property and therefore, a decree for recovery of possession could or should not have been sought for by the plaintiff in order to get full and effective relief in the suit. The relief sought for by way of the amendment to the extent of a decree for recovery of

possession and a further decree for a recovery of mesne profits are in the nature of consequential reliefs arising out of a decree for declaration in respect of the suit premises. The aforesaid reliefs as sought for by the petitioner herein can be said to be additional reliefs to that of decree seeking for declaration in respect of the suit premises. The trial court was not justified in holding that if the aforesaid amendment as sought for is allowed the same would change the nature and character of the suit. In my considered opinion even if the said amendments are allowed the same would not in any manner change the nature and character of the suit but would be in the nature of addition to the reliefs already sought for in the plaint. The trial court has also dismissed the application for amendment holding that the aforesaid amendments if allowed would also change the nature of the case. The provisions in the Specific Relief Act specifically provide that in a declaratory suit the plaintiff could also seek for consequential reliefs and in fact a suit where consequential reliefs which could be available to plaintiff, if not sought for in the declaratory suit, could be a ground for dismissal of the suit itself. In this connection reference may be made to a decision of the Supreme Court in *C.S. Company and Others Vs . Kerala State Electricity Board* : (1996)11SCC680, wherein the Supreme Court has said that if the amendment neither changes the cause of action nor introduces any new cause of action after the bar of limitation such amendments are to be allowed. In the aforesaid case the relief originally sought for was for settlement of accounts and fastening of liability jointly and severally against all the respondents against the assets and estate. The plaintiff, thereafter sought for a decree for damages by way of amendment. In that context the Supreme Court held that the amendment did not constitute addition of any new cause of action and that the respondent was not introducing any new cause of action and that he did not intend to change the cause of action as originally pleaded.

4. Reference could also appropriately be made to a decision of this court in *Sehdev Seth v. Smt. Vidya Wati & Others*; AIR 1974 Delhi 234. In the said suit the plaintiff sought for declaration stating that she was the owner and in possession of the flat in suit as the nominee of her deceased husband to whom the plot was allotted by the Housing society but that the defendant fraudulently obtained from her the letter of transfer. She subsequently, applied for amendment of plaint by

adding a relief of possession also. This court held that the amendment for the relief of possession was based on same cause of action i.e., the title and that it did not introduce a new cause of action as it was just and consequential relief and the defendant was aware of the plaintiff's object in filing suit and was not taken by surprise and therefore, the said amendment should be allowed when the same would not bar the suit by limitation. In the same context this court also held that although consequential relief of possession was not prayed for in the original plaint due to the mistake of the counsel for the plaintiff there was no negligence of the plaintiff and that the defendant was not prejudiced in any manner particularly when limitation for the relief was not barred. In my considered opinion, the ratio of the aforesaid decision is fully and squarely applicable to the facts and circumstances of the present case.

5. The suit in the instant case was filed on the basis of title. The defendants were also conscious of the fact that decree for recovery of possession was not sought for and accordingly, took up the said plea in the application under Order 7, Rule 11 CPC. The amendment praying for recovery of possession and recovery of damages and mesne profits are in the nature of consequential reliefs to the same cause of action i.e., the title and therefore, the petitioner herein has not sought to introduce any new claim or cause of action. Thus, it cannot be said that by asking the amendment for the relief of recovery of possession and payment of damages in addition to the declaration of right and title in respect of the suit premises the plaintiff has not sought to set up a new cause of action or a new case or an inconsistent case. In my considered opinion, the contention of the counsel for the respondent that there was delay in seeking for amendment is also without any merit, for the plaintiff has sought for the amendment immediately after an objection was taken by the defendants in their application under Order 7, Rule 11 CPC. It is also stated in the petition filed herein that the aforesaid mistake in framing the issue was committed by the counsel and that the petitioner was in no manner responsible for the same. In the light of the aforesaid discussions the order of the trial court is illegal and erroneous and also found to be without jurisdiction. The same is set aside. The application for amendment filed by the petitioner / plaintiff is allowed. The amendment as sought for in support of the plaint shall be incorporated in the plaint and the plaintiff shall be allowed to file the deficit court

fee. The defendant shall be allowed to file the amended written statement in respect of the amendment in the plaint allowed by this order.

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