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Court : Rajasthan

Decided On : May-29-2000

Reported in : 2000(4)WLC78; 2001(1)WLN555

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Revision Petition No. 1906 of 1999

Appellant : Kesar Devi

Respondent : Chandra Kanta

Advocate for Pet/Ap. : Mr. Sriram Yadav

Disposition : Petition dismissed

Judgement :

Arun Madan, J.

1. This civil revision petition arises out of order dated 27.9.1999 of the Civil Judge (Junior Division) Alwar in Civil Suit No. 474/1983, whereby petitioner's application under Order 6 Rule 17 CPC seeking amendment in the written statement was dismissed.

2. The plaintiff (respondent) instituted a civil suit for declaration, possession and permanent injunction against defendant No. 1 Ramdayal (who has since died, was

substituted by present petitioners during pendency of suit) and defendant No. 2 Gulkandi, in respect of agricultural land and immovable property situated in village Kalsara.

3. The agricultural land was of Khasra No. 35 (measuring 2 bighas 2 biswas), No. 80 (18 biswas) and No. 81 (4 bighas 2 biswas), whereas immovable property consisted of one room, one shop, one room duly covered by tin-shed and Nohra. Plaintiffs case is that the aforesaid suit land and property was in the Khatedari and ownership of her husband and that after death of her husband, she became Khatedar of aforesaid suit land and owner of the suit property but Gulkandi (defendant) disposed of the suit land and property in favour of defendant No. 1 Ramdayal vide registered sale deed dated 31.7.1978. Hence the plaintiff filed suit for declaring aforesaid sale deed dated 31.7.1978 as null and void and for possession of the suit land and property.

4. In his written statement, the defendant No. 1 denied the allegations made in the plaint. However, it has been contended that by virtue of the impugned registered sale deed, the defendant No. 1 (Ramdayal) purchased the suit land and property from the defendant No. 2 for sale consideration of Rs. 15,000/- and thereby he has been in possession of the property in question but the plaintiff wanted to interfere in their peaceful possession by dispossessing forcibly.

5. Issues were framed and statement of plaintiff Chandrakanta (PW1) was recorded, wherein she stated that she had taken forcible possession of the suit property and sold it after the written statement was filed by defendant No. 1. The petitioner's case is that as a result of the statement of plaintiff, it had necessitated to amend the written statement. Hence, the petitioners moved applications for amendment in written statement under Order 6 Rule 17 CPC and for appointment of receiver under Order 40 Rule 1 CPC. Both the applications were contested by defendants. The trial court dismissed both the applications by common order dated 27.9.1999. Hence this revision petition only against the dismissed of application for amendment in the written statement.

6. Mr. Sriram Yadav learned Counsel for the petitioners contended that the trial court committed error of jurisdiction in rejecting amendment application on the

ground that the petitioners sought counter claim under the garb of the proposed amendment. Shri Yadav submitted that since the circumstances set out in the application were not existing when the written statement was filed rather the circumstances came to light after recording statement of plaintiff on 20.4.1998, hence, the petitioners were entitled to make such counter claim by way of the amendment. Shri Yadav also contended that the amendment application is in three parts, firstly for amendment in the pleadings in written statement by adding two paragraphs while for counter claim separate submission was made and third part was for amendment in prayer Clause. But, the trial court was not justified in dismissing the application in and it could have allowed the amendment in the pleadings by refusing counter claim.

7. I have heard the learned Counsel for the petitioners and perused the impugned order only with reference to amendment application and the contentions made on behalf of the petitioners in this petition. It is not in dispute that the plaintiff in her application dated 14.11.1983 had submitted that she had been her possession over the disputed property, hence, the amendment be allowed in her plaint and the same was allowed by the trial court by its order dated 8.4.1985.

8. While the defendant has sought amendment in the written statement on 10.8.1998 after 15 years of filing of the same inasmuch as the fact of having taken possession of the suit property by the plaintiff had already come to the knowledge of the defendant on 14.11.1983 when she had applied for amendment in the plaint to that effect. The trial court observed that though the defendant had sought amendment under Order 6 Rule 17 CPC but in fact, sought permission to file counter claim whereas for counter claim, the cause of action must have arisen at the time of submission of written statement and not thereafter. However, since the cause of action for counter claim in case of the defendant has allegedly arisen on 20.4.1998 i.e. after the written statement had already been filed as long as on 19.1.1983, therefore, such counter claim has not been allowed by the trial court in view of the decision reported in 1998 (1) RLW (SC) P.4.

9. Prima-facie, I am of the considered opinion that in the instant case the cause of action for any such counter claim had arisen on or about 14.11.1983 when the fact

of having taken possession of the suit property by the plaintiff had derived from the application of the plaintiff seeking amendment in the plaint to that effect. The defendant had raised counter claim belatedly after about 15 years and that too after filing of the written statement which cannot be allowed and has rightly been rejected by the trial court. The amendment sought by the defendant in the facts and circumstances and keeping in view the contents of paras sought to be added in fact are rightly held by the trial court, to be counter claim, which cannot be allowed to be raised at the belated stage. The law is well settled that the cause of action as to the counter claim if at all relevant for its admissibility, should have arisen prior to the filing of written statement and not subsequent to it. My view is fortified from the decision of the Apex Court in Smt. Shanti Rani Das Dewanjee v. Dinesh Chandra Dey 1998(1) RLW (SC) P.4. However, before the amendment can be allowed though the trial court has its discretion to do so by allowing either party to amend pleadings in appropriate case in such manner and on such terms as may be just for determination of real question in controversy, but it is not obligatory upon the court to allow amendment in every case unless the court is satisfied prima facie that the question raised by way of amendment is necessary for determination of real controversy between the parties. The petitioner has failed to make out any case, which would satisfy requirement of Order 6 Rule 17 CPC. I do not find any illegality or jurisdictional error or material irregularity in the impugned order so as to warrant any interfere in exercise of revisional jurisdiction of this Court.

10. As a result of the above discussion, this revision petition being devoid of merit is dismissed in limine.