

Ramsukh Vs. Smt. Rukma Devi

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Court : Rajasthan

Decided On : May-10-2001

Reported in : 2002(4)WLN379

Judge : Prakash Tatia, J.

Appeal No. : S.B. Civil Revision Petition No. 147 of 2001

Appellant : Ramsukh

Respondent : Smt. Rukma Devi

Disposition : Petition dismissed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the petitioner as well as learned Counsel for the respondent. Perused the order dated 22.1.2001 by which the amendment application under Order 6 Rule 17 C.P.C. of the plaintiff was dismissed by the trial court.

2. The plaintiff submitted an application under Order 6 Rule 17 C.P.C. alleging that the Municipal Board, Jaitaran granted permission to raise construction to the defendant under Section 170 of the Rajasthan Municipalities Act, 1956 and that permission is liable to be cancelled by declaring it as illegal. According to learned

Counsel for the petitioner, the petitioner when came to know about the fact of permission from the Municipal Board, Jaitaran granting permission to raise the construction to the defendant from the written statement filed by the defendant they impleaded Municipal Board, Jaitaran as party to the suit and the court permitted to implead the Municipal Board, Jaitaran as party and, therefore, when the Municipal Board, Jaitaran is also party in the suit, the plaintiff rightly sought permission to amend the plaint for the purpose of seeking relief of declaration of the construction permission as illegal. According to the learned Counsel for the petitioner the plea taken by the defendant will adversely effect the parties of the plaintiff and therefore, the amendment was necessary.

3. In trial court the reply was filed by defendant and it was submitted that the construction permission was granted as back as on 14.1.2000 whereas application for amendment of the plaint has been filed in the court on 4.1.2001 and it was also submitted by the defendant that the plaintiff himself submitted objection before the Municipal Board, Jaitaran against the grant of permission for construction to the defendant and thereafter, the permission was granted. It was also submitted that the permission order is appealable order and appeal lies to the District Collector. The plaintiff has not filed any appeal against the order of grant of permission.

4. The trial court after hearing the arguments held that the permission was granted on 14.1.2000 whereas the suit was filed on 6.3.2000. The application for amendment was filed on 4.1.2001. The trial court also observed that the permission granted in favour of the defendant became final. After going through the facts of the case the trial court rejected the amendment application and held that the permission in favour of the defendant became final and a right accrued in favour of the defendant.

5. Learned Counsel for the petitioner submitted that the Municipal Board, Jaitaran has no right to decide the title of the property nor can decide any easementary right. Learned Counsel for the petitioner frankly admitted that grant of permission of construction by the Municipal Board, Jaitaran cannot effect any civil right of the plaintiff.

6. It is also submitted by the learned Counsel for the petitioner that the claim of the petitioner with respect to the wall in dispute is that this wall is exclusively in ownership of the plaintiff and if the wall is joint even then the defendant has no right to demolish the wall or to alter the wall in dispute.

7. In view of the admitted facts that the grant of permission to raise construction by the Municipal Board cannot effect any civil right of the plaintiff and the plaintiff will have to prove his case of either exclusive wall of his own or wall is of joint and also has no right to demolish or alter the wall in dispute. The permission granted by the Municipal Board for raising construction may be an act of bonafide of defendant under his alleged right to raise construction only, but the permission granted by the Municipal Board cannot effect the right of the plaintiff in the civil suit. Therefore, the amendment sought by the plaintiff is absolutely irrelevant for the purpose of deciding the point in controversy.

8. In view of the above reasoning the permission to amend the plaint cannot be granted to the plaintiff as sought by the plaintiff in the application under Order 6 Rule 17 CPC. Hence, the revision petition is dismissed.