

Dewan Singh and ors. Vs. Shelo Devi and ors.

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Court : Jammu and Kashmir

Decided On : Sep-17-2003

Reported in : 2004(1)JKJ341

Judge : S.K. Gupta, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) - Section 115 - Order 6, Rule 17

Appeal No. : Civil Revision No. 83/2003

Appellant : Dewan Singh and ors.

Respondent : Shelo Devi and ors.

Advocate for Def. : Ravinder Kr. Gupta, Adv.

Advocate for Pet/Ap. : Babu Ram Sharma, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. This Revision is directed against the order dated 10-3-2003 propounded by Munsiff, First Class, Sunderbani, whereby the application of the defendants/respondents for amendment of the written statement has been

allowed. It appears that in a suit for permanent prohibitory injunction commenced by the plaintiffs/ petitioners, the defendants/respondents filed demurrer and issues were settled by the Court on the pleadings of the parties on 14-1-2003 and the proceedings were set for arguments on preliminary issues to be listed on 21-1-2003. It was on 21st January, 2003, the defendants/respondents expressed their desirability to file amendment to the written statement and sought time for the same. Amendment application was filed by the defendants/respondents on 28-1-2003 averring therein that after the Naib-Tehsildar, Sunderbani, along with his staff had conducted a 'Nishandihi' in respect of Khasra No. 388, certain new facts came to their knowledge, which were earlier not known to them and are, thus, essential for the determination of the real matter in controversy between the parties. The facts to be introduced in the written statement by way of amendment have been explicitly delineated in paras 5 and 6 of the application initiated by defendants/respondents. After inviting objections, the Trial Court held that the facts to be introduced in the written statement by amendment are necessary in the interest of justice and allowed the application of the defendants/respondents vide order dated 10-3-2003. Aggrieved by the order of the Trial Court allowing the amendment of the written statement, the plaintiffs/petitioners impugned its correctness before me in this Revision.

2. Heard the learned counsel for the parties and also perused the record, meticulously.

Mr. B.R. Sharma, learned counsel appearing for the petitioners, vehemently urged at the threshold that the defendants/respondents in their written statement filed, at the first instance, admitted that plaintiff/peti-tioner-2 had sold his share of land measuring 4-1/2 marlas to Krishan Lal and other plaintiffs/ petitioners sold 10 marlas of land to Tirath Ram in Khasra No. 388 and only 1-1/2 marals of land was left with the plaintiffs on which they constructed a plinth. That in view of the admission of the defendants/respondents in respect of the plinth over 1-1/2 marlas of land owned and possessed by them, the facts sought to be introduced by amendment would change the very nature of the defence and, therefore, could not be allowed. His further submission is that the party should not be allowed by means of amendment for setting up a new cause of action. According to Mr. B. R.

Sharma, petitioners' Advocate, allowing of the amendment at this stage would amount to withdrawing the earlier admission made with regard to the properties in possession of the plaintiffs.

3. Whereas respondents, on the other hand, in controverting the contention of the petitioners, submitted that the facts sought to be introduced in the written statement came to their knowledge for the first time, after demarcation of land by Naib-Tehsildar, Sunderbani, along with his staff of Khasra No. 388 in their presence, about which they were ignorant earlier when written statement was filed. It is further contended by the respondents that the proposed amendment does not alter the basic structure of the defence, rather is essential for just decision of the case and resolving the real controversy between the parties.

4. Order 6 Rule 17 of the CPC deals with the amendment of pleadings. It clearly contemplates that amendment ought to be allowed where purpose of proposed amendment is to elaborate the defence and take additional pleas in support of the case. Even where there is an indirect admission in the original pleading, it is open to the defendant to explain the same. It has not been shown by Mr. B. R. Sharma, petitioners' Advocate, during debate that how the proposed amendment prejudices the case of the plaintiffs/petitioners. It is also not the case of the plaintiffs/petitioners that any accrued right has been tried to be taken away by the proposed amendment. Even looking to the proposed amendment, it is clear that it was required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings. From the records, it cannot be said that any new defence was sought to be introduced. It was open, even otherwise, to the defendants for taking alternative or other defence in addition. It cannot, therefore, be said, at any rate, that allowing the amendment caused irretrievable prejudice to the plaintiffs/petitioners.

5. It is pertinent to point out that under Order 6 Rule 17, amendment of the pleadings is allowed if such amendment is required for proper adjudication of the controversy between the parties and to minimize the litigation. Ordinarily, amendment is to be allowed, when it does not occasion serious prejudice to the opposite party. I do not find any infirmity, legal or factual, in the impugned order

drawn by the Munisff, First Class, Sunderbani, necessitating interference in the Revision.

6. In the facts and circumstances of the case, the petition does not possess any merit and is hereby dismissed. Record shall be remitted back to the Trial Court forthwith, where the parties through their counsel are directed to appear on 8th October, 2003.

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