

Mathru. Vs. Krishan Dutt and anr.

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Court : Himachal Pradesh

Decided On : Mar-03-2011

Judge : Deepak Gupta, J.

Acts : Tenancy and Right Reforms Act - Order 6 Rule 17

Appeal No. : CMPMO No. 196 of 2010.

Appellant : Mathru.

Respondent : Krishan Dutt and anr.

Advocate for Def. : Mr. Romesh Verma, Adv.

Advocate for Pet/Ap. : Mr. Suneet Goel, Adv.

Judgement :

1. This petition is directed against the order dated 13.5.2010 passed by the learned Civil Judge, Court No.5, Shimla whereby he rejected the application filed by the plaintiff for amendment of the plaint.

2. Originally the plaintiff filed the suit claiming that her father Kirpa Ram alongwith his brother Matha and Mastiya were tenants over the entire suit land and that her father was entitled to 1/3 rd share in the suit land as a tenant. Her father died in the year 1959 and thereafter her mother Kunla became the tenant of 1/3 rd share. Kunla died in the year 1980 and thereafter it was the plaintiff who was recorded as tenant and she got ownership under the Tenancy and Right Reforms Act. The

plaintiff challenged the entries recorded in favour of the defendants and prayed that her name should be incorporated in the revenue record. The suit was filed in the year 2001 and when the case was fixed for arguments in the year 2009 then this application was filed and by means of this application a prayer has been made that Matha brother of the father of the plaintiff died issueless. His wife Dholi executed a Will in favour of the plaintiff and she wants now to incorporate all these facts in the plaint and claims that she in fact should be held to be owner in possession of 2/3 rd share of the entire land instead of 1/3 rd share as earlier claimed. The learned trial Court rejected this application.

3. At the outset, I may state that in the application there is virtually no explanation as to why such facts were not pleaded in the plaint itself. After the amendment to Order 6 Rule 17 a proviso has been added and it debars any Court from allowing an amendment unless the party seeking amendment shows that the facts which are sought to be pleaded by way of amendment could not be pleaded in the original pleadings despite due diligence. There is no explanation worth the name given in the explanation.

4. I also find that the proposed amendment virtually changes the cause of action. The first cause of action was on account of natural inheritance from the mother Kunla Devi and now a fresh cause of action has been pleaded that Dholi wife of her paternal uncle had willed her share in the land to the plaintiff. This is a totally separate cause of action.

5. Lastly, even with this application copy of the Will was not filed. The averments are totally vague. Even the date of Will is not mentioned in the application. Therefore, the learned trial Court was fully justified in rejecting the application but it is indeed unfortunate that it took the learned trial Court almost one and a half year to decide such a simple application. The intention of the plaintiff appears to be to delay the proceedings, which is a mala fide intention. Hence, I find no merit in the petition, which is dismissed with costs assessed at Rs.2,000/-. The parties are directed to appear before the learned trial Court on 5 th April, 2011. Since only arguments have to be heard the learned trial Court shall make an effort to dispose of the case latest by 31 st May, 2011.

