

Amar Singh and Others Vs. Pushpa Khanna and Others

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Court : Himachal Pradesh

Decided On : Mar-30-2011

Judge : Deepak Gupta, J.

Acts : Code of Civil Procedure (CPC) (C.P.C) - Order 6 Rule 17

Appeal No. : CMPMO No. 102 of 2011

Appellant : Amar Singh and Others

Respondent : Pushpa Khanna and Others

Advocate for Pet/Ap. : Mr. G.D.Verma; Mr. B.C.Verma, Advs.

Judgement :

1. This petition is directed against the order dated 25 th February, 2011 passed by the learned Civil Judge, Junior Division, Kasauli, whereby she rejected the plaint filed by the defendants for amendment of the written statement.

2. The respondents (hereinafter referred to as the plaintiffs) filed a suit claiming to be owner in possession of the suit land and prayed for a decree of permanent prohibitory injunction restraining the defendants from causing interference in the ownership and possession of the plaintiffs. The stand of the petitioners-defendants was that though they had initially agreed to sell the suit land to Shri Janak Raj but this deal did not finally mature.

According to the defendants the sale deed reflected the sale consideration only of Rs.40,000/- whereas in fact total sale consideration was of Rs.4,00,000/- out of which Whether the reporters of local papers may be allowed to see the Judgment? Yes. Rs.40,000/- only were paid which was reflected in the sale deed and the balance amount of Rs.3,60,000/- was to be paid at the time of the mutation. The case of the defendants was that Shri Janak Raj did not want to take possession of the land in furtherance of the sale deed and also did not make any attempt to get the mutation attested in his favour since the deal stood cancelled. The suit aforesaid was filed in the year 2007 and the written statement was filed by the defendants on 23.7.2007.

Thereafter issues were framed and evidence were led by the plaintiffs and the case was fixed for defendants evidence on 5.10.2010 when the present application for amendment was filed. The basic plea raised by way of amendment is that the defendants want to file a counter claim praying that a decree be passed directing the plaintiffs to execute a deed of cancellation in respect of the aforesaid sale deed. This application was disallowed by the trial Court hence the present petition.

3. I have heard Shri G.D.Verma, learned senior counsel for the petitioners-defendants who submitted that amendment can be allowed at any stage and the Court should not go into the merits of the plea raised. The question of limitation should also not be looked into at this stage and lastly submits that the amendment is only clarificatory in nature and does not change the nature of the suit.

4. Order VI Rule 17 reads as follows:-

“Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties; Provided that no application for amendment shall be allowed after the trial has commenced,

unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.”

5. Proviso to Order VI Rule 17 was added vide the Code of Civil Procedure (Amendment) Act, 2002. The legislature by means of this amendment has put an embargo on the powers of the Court while allowing an amendment. The embargo is that unless the party who seeks an amendment satisfies the Court that it has acted with due diligence amendment cannot be allowed. In the present case in the application the only averment in this regard is that the defendants acted with due diligence. What are the facts which could lead to the inference that the defendants acted with due diligence are not stated in the petition.

It is the duty of the party seeking amendment to satisfy the conscience of the Court that it acted with due diligence and despite such due diligence it could not plead the facts now sought to be pleaded by way of amendment. This has not been done in the present case. Another reason to disallow the amendment is that admittedly the written statement was filed in 23.7.2007 and the application was filed on 5 th October, 2010. Limitation for filing a counter claim at best would be three years. Even if the case of the defendants is taken at best the limitation would start running from the date it was served in the suit and knew that the plaintiffs were claiming to be owner in possession of the suit land.

The application for amendment has been filed more than three years thereafter. It may be true that in certain cases the question of limitation is not gone into at the time of deciding the amendment application but when ex facie it is writ large that the prayer sought is time barred why should the Court allow de novo trial of the suit. The petition is, therefore, dismissed in limine. No order as to costs.