

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ-Petition (M/S) No.2319 of 2023

Doon Vihar Sehkari Awas Samiti, Dehradun

... Petitioner

Vs.

Dayanand Anglo Vedik Inter College and Another

... Respondent

Advocate: Mr. Ramji Srivastava, learned Standing Counsel for the petitioner.

Hon'ble Sharad Kumar Sharma, J.

The suit, being Suit No.367 of 1991, stood instituted as back as 04.06.1991 for the following relief:-

"9. That the Plaintiff Society prays for a decree against the defendants with the following reliefs:

(A) That the defendants, their agents, employees, workmen and all claiming title through the defendant be restrained by a decree of permanent injunction from interfering in any way in the possession of Plaintiff Society over the land in suit.

(B) That full cost of the suit be awarded against the defendants.

(Amended vide amendment dated 09.08.2007)

(B) That it be declared that the plaintiff Society, is the exclusive owner of the land in dispute.

(C) That any other relief which the learned court may deem fit and proper be also granted."

2. Relief number – (B) was amended to be incorporated by an order of 09.08.2007 thereby seeking a declaration over the property as to be an exclusive owner of the land. On the basis of the amended plea, the learned trial Court has framed the issues and, particularly, the issue with which we will be concerned with is issue no.6. Issue no.6, as framed by the trial Court, reads as under:-

“6. क्या वादी को वादग्रस्त सम्पत्ति पर प्रतिकूल कब्जे के आधार पर स्वामित्व का अधिकार प्राप्त हो गया है?”

3. In a nutshell, the issue no.6 dealt with as to whether the plaintiff could claim a right and title over the disputed property on the basis of an adverse possession. At the relevant point of time, the law as it was prevailing, it was being governed by the ratio laid down by the Judgment of the Hon'ble Apex Court in the case of **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala**, as reported in **(2014) 1 SCC 669**, which has observed, that though a person, who is in occupation of a land by way of an adverse possession, can continue to occupy, but he cannot seek a declaration of rights, by virtue of an adverse possession.

4. Consequently, based on which, the suit was partially decreed on 12.11.2015 and, as a result thereto, there were two appeals filed, one by the plaintiff and one by the defendant, being Civil

Appeal No.77 of 2017 and Civil Appeal No.144 of 2017.

5. It is that at the appellate stage, that the application (Paper No.33A1) was filed by the petitioner seeking to amend the pleadings in the body of the appeal whereby, by virtue of the amendment, the grounds of appeal was sought to be amended to the following effect:-

“(f1) BECAUSE the Trial Court vide Judgment dated 22.04.2010 wrongly rejected the amendment application paper no.202A & wrongly held that amendment sought for shall change nature of suit and lead to various complications.

iii) That subsequent to para (f1) a new para (f2) be added to be read as "(f2) Because the Learned Trial Court failed to decide title of the Plaintiff Society on the basis of adverse possession in alternative against Defendant No. 2."

6. The justification, which was attached to seeking the amendment by the present petitioner, who is an appellant in Appeal No.77 of 2017, was because of the changed legal scenario and because of the fact that judgment, as referred to by the trial Court in paragraph no.52 i.e. **Gurudwara Sahib(supra)** has been overruled subsequently by the Hon'ble Apex Court in **(2019) 8 SCC 729, Rarinder Kaur Grewal and Others Vs. Manjit Kaur and Others; (2020) 3 SCC 220, Narendra Kumar Tripathi Vs. Karuna Auddy and Others; (2020) 12 SCC 244, Krishnamurthy S. Setlur Vs. O.V. Narasimha Setty; and (2020) 10 SCC**

264, *Mohammade Yusuf and Others Vs. Rajkumar and Others.*

7. In view of the changed legal scenario, the amendment was sought, which has been rejected by the Appellate Court, on the ground, that it will be changing the nature of the case.

8. The plea taken by the applicant, which was being sought to be incorporated by way of an amendment, in fact, no specific plea was required to be taken by way of a ground to be added by amendment, because it was absolutely a question of law, which was required to be argued, based upon the changed ratio, laid down by the Hon'ble Apex Court, whereby the trial Court's judgment, which was exclusively based upon the judgment of **Gurudwara Sahib(supra)**, which was overruled, it would be open for the appellant to argue the same on the basis of the subsequent judgments, as referred to hereinabove, that a declaration of right over the property in question could be sought by virtue of an adverse possession.

9. As such, no formal amendment was required to be carried in the memo of appeal, because the said question, being absolutely a question of law, could be argued, even without pleading and which stands fortified by the opposite party to the appeal in their objections taken to the amendment application.

10. In that view of the matter, no formal amendment is required, since the issue being pure question of law, based under the changed legal situation, the writ-petition would stand disposed of, leaving it open for the petitioner to argue the matter on these grounds, in the light of subsequent judgments as rendered by the Hon'ble Apex Court as referred to hereinabove, qua its effect on the judgment of **Gurudwara Sahib(supra)** pertaining to the claim of right over the immoveable property by way of an adverse possession.

11. So far as the second ground, which was being sought to be amended, it would yet again entail consideration of a legal question, which would be permitted to be argued by the appellant by the Appellate Court when the appeal itself is decided on merits, in the light of the provisions contained under Section 105 of the CPC.

12. Subject to the aforesaid exception, as carved out to the order of rejection of the amendment application, the writ-petition would stand disposed of.

(Sharad Kumar Sharma, J.)

17.08.2023