

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8639 of 2023

Petitioner :- Chhanna Lal And Another

Respondent :- Arvind Kumar And 3 Others

Counsel for Petitioner :- Panchu Ram Maurya, Satyendra Singh Chandel

Counsel for Respondent :- Ram Chandra Uttam, Ram Chandra Uttam

Hon'ble Jayant Banerji, J.

1. Heard P.R. Maurya, learned counsel for the petitioners and Shri Hari Shankar Chaurasia (AOR No.A/H 0250/2015) holding brief of Shri R.C. Uttam, learned counsel for the respondent no.3.

2. This petition has been filed challenging the order dated 11.09.2019 passed by the Civil Judge (Senior Division), Hamirpur allowing the amendment application, paper no.31-Ka, moved by the plaintiff-respondents in Original Suit No.167 of 2018 (Arvind Kumar & Ors. vs. Chhanna Lal & Anr.). Further under challenge is an order dated 10.05.2023 passed by the Additional District Judge, Hamirpur in Civil Revision No.18 of 2019 (Chhanna Lal & Anr. vs. Arvind Kumar & Ors.), whereby the revision filed against the order dated 11.09.2019, has been dismissed.

3. The contention of the learned counsel for the petitioners is that Original Suit No.167 of 2018 was filed by the plaintiff-respondents seeking relief of permanent injunction restraining the defendant-petitioners from making any constructions in the plaint map marked as स 1 द थ न and, further not to close the door at the point marked as 'ट' and not to interfere in the

peaceful possession of the plaintiffs. Further mandatory injunction was sought for eviction of the defendants. It is stated that a written statement was filed by the defendant-petitioners in which it was, inter alia, stated that since the father of the plaintiffs had filed a suit in the court of the Civil Judge (Junior Division), Hamirpur, being Original Suit No.303 of 1996 (Manna vs. Chhanna Lal & Ors.) on the basis of an alleged right over the property of defendants, which, it is stated, was dismissed in default on 09.02.1998 and was not restored, as such that has become final and a second suit cannot be filed on the same facts.

4. It is stated that thereafter an application 31-A was filed by the plaintiffs on 26.03.2019 in the suit of 2018 seeking amendment in the plaint. The contention is that since the nature of the suit was sought to be changed by means of the amendment, an objection 33-C was filed by the defendant-petitioners opposing the amendment. By an order dated 11.09.2019, the trial court allowed the application 31-A and permitted the amendment. It is stated that thereafter a challenge was made in a revision before the court of the District Judge, Hamirpur, which was dismissed by the impugned order dated 10.05.2023 passed in Civil Revision No.18 of 2019 by the Additional District Judge/F.T.C.-II, Hamirpur.

5. Learned counsel for the respondent no.4 has opposed the petition.

6. A perusal of the application 31-A that has been filed as Annexure-3 to this petition reflects that an allegation was made that fresh constructions were made by the defendants after institution of the suit and an application was filed before the Superintendent of Police on 28.09.2018 and online complaint

had also been lodged. It was stated that the site marked as 'C' on which the door of the plaintiffs exists has been closed because of the constructions and in view of the aforesaid facts, the amendments were sought.

7. I have perused the amendments sought as well as the order of the Civil Judge dated 11.09.2019. After noting the contention on behalf of the plaintiffs that the amendments sought were factual in nature and the nature of the suit would not be changed, and after relying upon several judgments of this Court as well as the Supreme Court, it has been observed that the court would not examine the merits of the amendment sought, and, that the plaintiff has filed the amendment application in view of the constructions made during the pendency of the suit. It was noted that whether the constructions were made prior to the suit or thereafter, the parties can lead evidence in that regard. An objection was raised on behalf of the defendants that in respect of the suit property, earlier a suit, being Original Suit No.303 of 1996, was filed in which the defendants had filed their written statement bringing on record the constructions made on the suit property. The court held that on perusal of the document 30-C2, it is evident that the suit was decided on merits and it could not be said that with regard to the suit property, the court had recorded no finding. The court observed that at this stage, there is no ground for dismissing the amendment application on merit. The application for amendment 31-A was, accordingly, allowed with cost of Rs.1000/-.

8. The amendments sought are in the body of the plaint as well as in the relief clause which, apparently, are stated to be pursuant to the constructions made by the defendant-petitioners during pendency of the suit. In the objection dated 10.05.2019

filed by the defendant-petitioners, which was marked as paper no.33-C, the objections primarily taken were that the nature of the suit would be completely changed and the shops in dispute have been made prior to the suit.

9. Evident it is from the order impugned that the court has correctly recorded that the amendment application cannot be considered on its merit. The amendment sought by the plaintiff is in respect of the alleged constructions made after the institution of the suit. The nature of the suit would not be changed and the trial is yet to commence in the suit.

10. Under the circumstances, no interference is required in the orders impugned and the petition is, accordingly, **dismissed**.

Order Date :- 30.11.2023

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(Jayant Banerji, J.)