

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8785 of 2023

Petitioner :- Rajendra Ravidas

Respondent :- Rajdev And 5 Others

Counsel for Petitioner :- Ashutosh Kumar Gautam, Rituvendra Singh Nagvanshi

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner.

2. This petition has been filed seeking the following relief:

"It is, therefore, Most Respectfully Prayed that this Hon'ble Court may be pleased to call for record set-aside order dated 15.7.2023 (Annexure No.10) passed by the District Judge Mau in Civil Revision No. 8 of 2023 (Rajendra Ravidas Vs. Rajdev and others) and order dated 21.1.2023 (formal order dated 25.1.2023) (Annexure No.8) passed by the learned Civil Judge (Senior Division) Mau, may remain stayed, during the pendency of the petition, otherwise petitioner shall suffer irreparable loss and injury. And/or to pass such other and further order which this Hon'ble Court may deem fit and property in the circumstances of the case."

3. It appears that an Original Suit No. 358 of 2003 was filed by the plaintiff-petitioner seeking a decree of cancellation of a will deed dated 30.7.1987 that was registered on 31.7.1987 as well as a decree for permanent injunction. Initially, the suit was decreed ex-parte but was set aside subsequently and a written statement was filed. It is stated by the learned counsel for the petitioner that number of the suit was converted to Suit No. 170 of 2017.

4. In the aforesaid suit, it is contended by learned counsel that an application under Order 6 rule 17 CPC was filed bearing paper no. 134Ka2 seeking amendment in paragraph 9 and 11 of the plaint. It is stated that a will deed dated 2.2.1988 was executed by the deceased in favor of the plaintiff which could not be found earlier as it was mixed up with other documents and as such the amendments were sought. It is stated that by the impugned order dated 21.1.2023, the amendment application was dismissed. Thereafter, Revision No. 8 of 2023 filed by the petitioner was unsuccessful and was dismissed by the judgment and order dated 15.7.2023 which also is impugned in the present case. It is contended that neither the nature of the suit would be changed by

the amendment nor is the amendment frivolous. It is contended that as a matter of fact, the amendments are necessary to decide the real issue in controversy between the parties. In support of his contention, learned counsel for the petitioner has relied upon a judgment of the Apex Court in the case of **B. K. N. Pillai vs. P. Pillai** reported in **AIR 2000 SC 614** and another judgment of the Supreme Court in **Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and others** reported in **AIR 2012 SC 1887**.

5. A perusal of the application for amendment that has been filed as Annexure No. 6 to the petition shows that the following two amendments were sought:

"1. यह कि वाद पत्र की धारा 9 के अन्त में इबारत दर्ज करने की अनुमति प्रदान की जाय "कि दत्तक पिता वादी स्वयं रामदेव ने अपने जीवन काल में वादी के सेवा सुश्रुवा से प्रसन्न होकर दिनांक 02.02.1988 को वादी के पक्ष में दस्तावेज वसीयत स्वस्थचित एवं मन से तहरीर किया और उन्होंने दस्तावेज वसीयत दिनांक 02.02.1988 में स्पष्ट रूप से बात का जिक्र किया है कि यह दस्तावेज वसीयत उनकी पहली व आखिरी दस्तावेज वसीयत है।

2. यह कि धारा 11 वाद पत्र की उप धारा "श" के ठीक बाद मजीद उप धारा "च" दर्ज किया जाय। (च) यह कि चूँकि स्वयं रामदेव पुत्र दवर ने अपने द्वारा लिखित दस्तावेज वसीयत में स्पष्ट रूप से इस तथ्य का जिक्र किया कि उक्त दस्तावेज वसीयत उनकी पहली व आखिरी दस्तावेज वसीयत है। लेहाजा इस आधार पर यह तथ्य भली भाँति सिद्ध है कि विवादित वसीयतनामा दिनांक -30.07.1987 स्वयं रामदेव द्वारा तहरीर नहीं की गयी है और उक्त दस्तावेज वसीयत दिनांकित -02.02.1988 के परिपेक्ष में विवादित दस्तावेज वसीयत दिनांकित- 30.07.1987 स्वयं निरस्त समझी जायेगी और वह शून्य एवं निष्प्रभावी है।"

6. The trial court observed that the suit is pending since a long time and the evidence of the plaintiff has concluded and the matter is pending for the evidence of the defendants. It was noted that the amendment sought for was in respect of a will dated 2.2.1988 is not such a fact which could not have been narrated by the plaintiff in the suit by exercising due diligence. It was further observed that the trial of the suit has commenced and the evidence of the defendant is in progress and there is a direction of the High Court for expeditious disposal of the suit. Accordingly, the application was rejected. The revisional court referred to a gamut of the judgments passed by various Courts and noticed that no specific particulars were given in the application for amendment. It was observed that the explanation offered for the delay was completely unacceptable as no particulars were given by the plaintiff and it did not satisfy the proviso to Order 6 Rule 17 of the Code of Civil Procedure. The revisional court noticed that though it is correct that delay itself is not a ground to reject the application for amendment, but where no particulars are given, the explanation

given for the delay is completely unacceptable and does not satisfy the proviso to Order 6 Rule 17 and hence, it cannot be said that the amendments were moved bona-fidely. It was further stated that the amendments sought were inconsistent with the previous pleadings of the plaintiff and it was highly belated and inordinate delay and therefore, the trial court has rightly rejected the application for amendment. Accordingly, the revision was dismissed.

7. Though, there is no bar for a party to seek amendments in the pleadings, the amendments, ordinarily, have to be allowed provided certain conditions are fulfilled as is mentioned in the judgment of the Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders** reported in **AIR 2022 to SC 4256**. However, the amendment sought has to be viewed in the light of the proviso to Order 6 Rule 17 CPC that was inserted in the CPC with effect from 1.7.2002. The aspect of due diligence has to be demonstrated by a party seeking amendment where the trial has commenced so as not to render the mandate of the legislature inert. Judgments cited by learned counsel for the petitioner are of no assistance to him in as much as in **B. K. N. Pillai**, the matter arose out of proceedings in a suit filed prior to amendment made in Order 6 Rule 17 CPC. In the case of **Rameshkumar Agarwal**, it does not appear that the trial had commenced. A perusal of the paragraph 5 of the judgment reflects that after filing a suit for specific performance in the year 2007, the plaintiff filed Chamber Summons No. 1233 of 2008 for amendment of plaint for impleadment of two parties as plaintiff Nos. 2 and 3 and three parties as defendant Nos. 3, 4 and 5 apart from the fact that he wanted to explain how money was paid. The Court observed that the amendment merely sought to introduce the facts/evidence in support of the contention already pleaded, that is, that the entire consideration under the agreement had been paid. Accordingly, it was held that there is no inconsistency in the case of the plaintiff. Even in the judgment of the **Life Insurance Corporation of India**, it is evident that the suit was instituted in the year 1986 in which case also the amendment to Order 6 Rule 17 CPC was not considered.

8. A perusal of the application 134Ka2 itself reveals that no specific dates have been reflected therein as to how the plaintiff gained knowledge of the will deed dated 2.2.1988 and whether he had exercised due diligence before filing of the suit in the year 2003. It is noted that the plaintiff claims to be the adopted son of the deceased/testator.

9. Under the circumstances, the orders impugned do not require to

be interfered with and this petition is, accordingly, **dismissed**.

Order Date :- 1.11.2023

A. V. Singh

(Jayant Banerji, J.)