

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 2893 of 2017

Petitioner :- Munna Lal And Another

Respondent :- Chandan Singh

Counsel for Petitioner :- Rishikesh Tripathi, Shashwat Kishore Chaturvedi

Counsel for Respondent :- Kamlesh Kumar Tiwari

Hon'ble Jayant Banerji, J.

1. Heard Shri S.K. Chaturvedi, learned counsel for the petitioners.
2. This case was mentioned for being taken up out of turn and notice thereof was served on Shri K.K. Tiwari, learned counsel for the respondent. The mention slip has been handed over by the learned counsel for the petitioner which is made part of the record.
3. Learned counsel for the respondent is not present.
4. Since, the affidavits have been exchanged, this case is being taken up for disposal.
5. Under challenge in the present petition is the order dated 30.7.2016 passed by the Civil Judge (Junior Division)/FTC, Jhansi in Original Suit No. 135 of 2011 (Chandan Singh Vs. Munna Lal and another). Also under challenge is the judgment and order dated 21.1.2017 passed by the Additional District Judge, Court No. 6, Jhansi in Civil Revision No. 39 of 2016 (Munna Lal and another Vs. Chandan Singh) whereby the amendment application filed by the plaintiff-respondent for amending the plaint under Order 6 Rule 17 CPC was allowed.
6. The contention of the learned counsel for the petitioner is that alongwith the plaint in which permanent injunction was sought, a plaint map marking the disputed site अ, ब, स, द was enclosed. It is stated that written statement was filed and thereafter on 27.9.2012, the issues were framed. It is further stated by learned counsel that with reference to paragraph 8 of the petition that examination-in-chief of the plaintiff Chandan Singh was filed on 15.2.2013 in the trial court. It is stated that an application dated 10.7.2015 bearing paper no. 113A1 was filed by the plaintiff seeking amendment to the plaint map.

7. It is stated by learned counsel that the plaint map was replaced and entirely new map was enclosed alongwith the amendment application which, despite strenuous objection made by the defendants came to be allowed by the impugned order dated 30.7.2016. It is stated that the trial court has observed that the map is filed alongwith the amendment application would only clarify the plaint map which would assist in disposal of the suit efficiently. It is stated that the trial court also observed that allowing the application would prevent multiplicity of the proceedings.

8. Learned counsel has referred to the revision bearing Civil Revision No. 39 of 2016 that was filed by the plaintiff-petitioners against the aforesaid impugned order dated 30.7.2016, which revision, by the impugned order dated 21.1.2017, was dismissed by the Additional District Judge, Court No. 6, Jhansi. The contention is that the trial court as well as the revisional court have not dealt with the proviso to Order 6 Rule 17 CPC which prohibits any application for amendment to be allowed after the trial has commenced unless the court comes to the conclusion that inspite of due diligence the parties could not have raised the matter before the commencement of the trial. In support of his contention, the learned counsel has relied upon a judgment in the case of **Azad Chaudhary Vs. Jai Kumar** reported in **2016 (5) ADJ 758** in which this Court has dwelt on the aspect of the proviso to Order 6 Rule 17 CPC as well as consideration of the phrase "commencement of the trial".

9. In the counter affidavit filed on behalf of the plaintiff-respondent, in reply to paragraph 8 of the petition, denial has been proffered and it is stated that evidence filed in the miscellaneous petition can be verified from the record. It is stated in the counter affidavit that the plaintiff-respondent has rightly filed a copy for proving his case. There is no specific denial in the counter affidavit regarding the factum of the filing of the affidavit as examination-in-chief on 15.2.2013. For want of specific denial, that fact which is taken to be admitted. Even perusal of the photocopy of the affidavit that appears on Annexure No. 6 to the affidavit reflects that it is dated 15.2.2013. A perusal of the orders impugned reflect that there is no consideration whatsoever regarding the proviso to Order 6 Rule 17 CPC. The application paper no. 113A1 reads as follows:

"निवेदन है कि सायलान ने उक्त वाद में वादी ने वादपत्र के साथ नक्शा संलग्न किया है जो नक्शा जुज वादपत्र है लेकिन त्रुटिवश उक्त नक्शों में विवादित स्थल की सीमार्यें गलत तहरीर हो गयी हैं। इसके अलावा उक्त नक्शों में अन्य भी त्रुटियां हो गयी हैं। उक्त त्रुटियां एक सदभावी मानवीय त्रुटियां हैं। जिसके बावत वादपत्र में

संशोधन की आवश्यकता है। जिस प्रस्तावित संशोधन से वाद की प्रकृति, स्वभाव, स्वरूप व विषयवस्तु में कोई परिवर्तन नहीं होता है। उक्त त्रुटियों का संज्ञान वादी को अभी हाल ही में मुकदमा की तैयारी के वक्त हुआ है।

अतः प्रार्थना है कि वादी को वादपत्र में निम्नलिखित संशोधन करने की अनुमति प्रदान करने की कृपा की जावे।

1- यह कि नक्शा संलग्न वादपत्र डिलीट किया जाकर नक्शा संलग्न प्रा० प० जुज वादपत्र बनाये जाने की अनुमति प्रदान की जावे।

तसदीक :- मैं चन्दन सिंह तसदीक करता हूँ कि प्रा० प० का कुल मजबूत मेरे जातीय इल्म से सही व सच है तसदीक आज दिनांक 10/7/15 को अंदर हाता जजी झांसी की गई।

प्रार्थी

चन्दन सिंह... वादी"

10. Therefore, the reason given for non-filing the amendment earlier is that the boundaries are incorporated and there are other errors in the map which are bonafide. The proposed amendment will not change the nature of the suit and the errors have come to the knowledge of the plaintiff while preparing the case.

11. Having perused the record and considered the arguments made on behalf of the learned counsel for the petitioner, this is a fit case for interference. This petition is, therefore, **allowed** and impugned order dated 30.7.2016 passed by the Civil Judge (Junior Division)/FTC, Jhansi in Original Suit No. 135 of 2011 and impugned order dated 21.1.2017 passed by the Additional District Judge, Court No. 6, Jhansi in Civil Revision No. 39 of 2016 are hereby set aside and the matter is remitted to the trial court to take a fresh decision on the application no. 113A/1.

Order Date :- 11.12.2023

A. V. Singh

(Jayant Banerji, J.)