

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9368 of 2023

Petitioner :- Rakesh Kumar And 2 Others

Respondent :- Rajesh Kumar And 7 Others

Counsel for Petitioner :- Gulab Chandra,Rupesh Kumar Singh

Hon'ble Jayant Banerji,J.

1. Heard Sri Gulab Chandra, learned counsel for the petitioners and Sri A.K. Srivastava (Advocate Roll No. A/A 0684/2012), holding brief of Sri Krishna Dutt Tiwari, learned counsel for the respondent no.1.
2. This petition has been filed seeking the following relief:-

“i. to pass order or direction, setting aside the impugned order dated 29.5.2023 passed by learned trial court/Civil Judge (Senior Division) F.T.C., Allahabad allowing the amendment application paper No. 30Ga in Original Suit No. 636 of 2022 Rajesh Kumar and another Versus Rakesh Kumar and others and to set aside the impugned judgment and order dated 17.8.2023 passed by the learned lower appellate court/Additional Sessions Judge Court No.6, Allahabad in Civil Revision No. 154 of 2023 Rakesh Kumar and two others-revisionists Versus Rajesh Kumar and others-respondents, and to allow the petition with cost.
3. The plaintiff-respondents filed the aforesaid Suit No. 636 of 2022 seeking declaration of a sale deed registered on 20.2.2021 as void and also a decree of permanent injunction.
4. In the plaint, the cause of action was stated to arise on the date of registration of sale deed dated 20.2.2021 and on 6.9.2021 when an alleged threat was held-out to the plaintiffs. The plaint appears to have been filed on 14.9.2022. A written statement was filed on 10.10.2022. An application dated 19.10.2022 under Order 6 Rule 17 read with section 151 of the Code of Civil Procedure¹ was filed seeking amendment in line 2 of paragraph 12 of the plaint, in effect, for amending date from 6.9.2021 (stated to be date on which the cause of action arose) to 6.9.2022. Further, in the verification clause, the date 14.9.2022 was sought to be added. By the impugned order dated 29.5.2023, the trial court allowed the application on cost of Rs. 1500/-. Thereafter, the defendant-petitioners

¹ CPC

filed a Revision under Section 115 CPC in the court of District & Sessions Judge, Allahabad which, by means of judgment and order dated 17.8.2023, was dismissed.

5. The contention of the learned counsel for the petitioners is that the amendment in the plaint has to be viewed strictly and no change in the cause of action is permissible. It is stated that as alleged in the amendment application 30-C, that word '2' had been wrongly typed as '1' and same be corrected as '2' to read the date as 6.9.2022, is false and such amendment is not permissible.

6. Learned counsel for the petitioners has relied upon a judgment dated 18.4.2007 of the Supreme Court in **Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others in Civil Appeal No. 2019 of 2007** as well as a judgment dated 18.1.2018 of a coordinate Bench of this Court in **Matter Under Article 227 No. 261 of 2018 (Dharmendra Kumar Sharma Vs. Somendra Babu and 13 others)**.

7. Learned counsel for the respondents has stated that the amendment sought is only for incorporating certain figures/dates in the plaint that have been wrongly typed/omitted to be typed in the plaint. It is contended that the cause of action is not altered by the amendment and moreover the amendment is necessary for determining the real question in controversy involved and, no injustice would be caused to either side if the amendment is allowed. It is contended that the amendment has been rightly allowed by the trial court. Learned counsel has relied upon judgment of the Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another in Civil Appeal No. 5909 of 2022**.

8. The trial court has relied upon a judgment of **Donapati Narayana Reddi Vs. Duggireddi Venkatanarayana Reddi**² while allowing the application with cost. The revisional court in its judgment and order dated 17.8.2023 has stated that against the order allowing the amendment, the

² AIR 2001 SC 3685

revision under Section 115 CPC is not maintainable. No arguments has been advanced by the learned counsel for the petitioners to controvert the findings returned by the revisional court which is based upon the judgment of the Supreme Court in the case of **Prembuxi and others Vs. Dharmdev and others**³.

9. The judgments relied upon by the learned counsel for the petitioners are of no assistance to them.

10. In the case of **Usha Balashaheb Swami (supra)**, the Supreme Court was considering the amendment to a written statement which was rejected by the High Court and it was held by the Supreme Court that the written statement deserved to be allowed. Learned counsel for the petitioners has relied upon an observation made by the Supreme Court in the aforesaid judgment, which said that altering or substituting a new cause of action in the plaint may be objectionable. Learned counsel for the petitioners has not been able to demonstrate as to how the change in the date that is stated to have arisen due to typographical error, could change the cause of action.

11. So far as judgment in **Dharmendra Kumar Sharma (supra)** is concerned, learned counsel has referred to paragraph-16 of the judgment appearing at page 7 of the judgment, in which the judgment of the Supreme Court in the aforesaid case of **Usha Balashehab Swami (supra)** has been considered.

12. In paragraph-20 of the judgment in **Dharmendra Kumar Sharma**, this Court has relied upon a judgment of **Smt. Maya Devi** to observe that in the given facts, there was clear lack of 'due diligence' and the mistake committed certainly does not come within the purview of typographical error. Under those facts and circumstances, the Court held that due diligence was not observed and, therefore, the writ petition was dismissed.

3. AIR 2002 SC 559

13. At this stage, the contention of learned counsel for the petitioners is that due diligence was not exercised by the defendant-petitioners and, therefore, the amendment could not have been allowed. This contention of the learned counsel for the petitioners is misconceived. The phrase 'due diligence' as appearing in the proviso to Order 6 Rule 17 CPC would come into play where the Court proceeds to consider an amendment application where trial has commenced. The proviso itself comes into play after the commencement of the trial and not before. In the present case, the stage of the suit is prior to trial and, therefore, the arguments of learned counsel for the petitioners is to be rejected.

14. Be that as it may, the trial court has allowed the amendment application on payment of cost of Rs. 1500/-. Even if certain inconvenience has been caused to the defendants-petitioners, the same stands duly compensated. Under the circumstances, interference is declined and this petition is **dismissed**.

15. At this stage, learned counsel for the petitioners states that the trial of the case be expedited. The order sheet of the trial court has not been filed. In any view of the matter, the suit itself is of the year 2022 and it is not known whether issues have been framed in the matter. Therefore, the oral prayer so made is declined.

Order Date :- 30.10.2023

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(Jayant Banerji, J)