

Court No. - 17

Case :- WRIT - C No. - 1001001 of 1997

Petitioner :- Abdul Mannan

Respondent :- District Judge Pratapgarh

Counsel for Petitioner :- K.P.Singh,Dinesh Kumar
Srivastava,Ganga Prasad

Counsel for Respondent :- C.S.C.,R.B. Tiwari,S.C.Shukla

Hon'ble Alok Mathur,J.

1. Heard Sri Dinesh Kumar Srivastava, learned counsel for the petitioner as well as learned Standing Counsel for respondent no. 1.
2. Request has been made by learned counsel for the petitioner to change the nature of writ petition from petition under Article 226 to Article 227 of the Constitution of India, in the light of judgment of Hon'ble Supreme Court.
3. Learned Standing Counsel has no objection to the above prayer made on behalf of petitioner.
4. Accordingly, request made by counsel for the petitioner is allowed. Present matter is treated to be under Article 227 of the Constitution of India.
5. By means of present writ petition the petitioner has challenged the order dated 13.02.1996, passed by the District Judge, Pratapgarh in exercise of revisional jurisdiction and thereby rejecting the revision preferred by the petitioner.
6. The petitioner has instituted a suit for permanent injunction against respondents from restraining them from interfering in the petitioner's possession over the property in dispute. The said suit was filed in the year 1987, subsequently, subsequently, the petitioner filed an application for amendment in 1991 and same was allowed on 19.02.1991, whereby relief for demolition of the wall was included in the said suit and simultaneously the petitioner has also sought deletion of relief with regard to possession which has been sought by him in the plaint. After the said amendment application was allowed, the petitioner moved another application for amendment on 19.08.1994 for addition of prayer pertaining to possession which has been deleted previously. The trial Court allowed the said amendment application by means of order dated 19.09.1994. The said order was assailed in revision before the District Judge, Pratapgarh. The District Judge allowed the revision preferred by the respondents. He has stated that firstly the petitioner had moved

an application for amendment to include the relief of possession and simultaneously the petitioner moved another application for amendment to delete the said relief of possession was substituted with relief of demolition of wall and again he moved an application for restoration of possession which has been allowed by the trial Court. The revisional Court was of the view that plaintiff could not act in such a manner changing his relief time and again, because such an action deprives the defendants from their legal right which has accrued to them by allowing the said amendment and relief of possession has once been deleted by him, same could not have been allowed subsequently by means of amendment. The District Judge has stated that the plaintiffs has to be sure about his relief which he seeks from the Court and he cannot allow repeated change in prayer as it would amount to hide and seek between the parties and it would be inequitable for the defendants.

7. Learned Standing Counsel has admitted that on previous occasion in 1991, petitioner's application for amendment was allowed. He submits that amendment was allowed due to the fact that learned counsel had included the prayer for deletion of prayer for possession. No other ground was urged by learned counsel for the petitioner while assailing the revisional order.

8. Heard learned counsel for the parties and perused the record.

9. It is noticed that the revisional Court has correctly allowed the revision and set aside the order of trial Court dated 19.09.1994, while allowing the application for amendment he had substantially changed the relief and added petitioner's prayer for permanent injunction and deleting the prayer with regard to possession. The suit progressed and after three years, petitioner again moved an application for amendment. Such a conduct cannot be permitted or allowed at the behest of the plaintiff and he cannot be allowed to change the prayer as sought in the said suit. No cogent reason has been indicated for allowing the said amendment and it has been argued that it was the fault of the counsel, which ground cannot be accepted.

10. In the light of above, present writ petition being devoid of merits is dismissed.

11. Considering the fact that proceedings of suit are held up due to interim order passed by this Court, the trial Court is directed to proceed and decide the suit expeditiously. He shall not grant any unnecessary adjournment to either of the party and in case adjournments are granted, then due reasons shall be recorded by the Court below in the order sheet.

Order Date :- 18.11.2023/A. Verma

(Alok Mathur, J.)