

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6280 of 2023

Petitioner :- Ram Mohan Singh

Respondent :- Addl. District Judge/Special Judge(Ndps) Act Balrampur
And 12 Others

Counsel for Petitioner :- Mohd.Yusuf Ansari,Rushida Farheen

Hon'ble Rajnish Kumar,J.

1. Heard Ms. Rushida Farheen, learned counsel for the petitioner.
2. This petition has been filed challenging the order dated 09.11.2023 passed by the Additional District Judge/Special Judge (NDPS) Act, District Balrampur in Civil Appeal No.08/2014, by means of which the application for amendment 64A has been rejected.
3. Learned counsel for the petitioner submits that on account of advice of the earlier counsel, the amendment was made. However, after his death, when another counsel was engaged then he advised that the amendment earlier made should be withdrawn and the fresh amendment is to be made. Accordingly, application for amendment under order 6 Rule 17 C.P.C. was filed which has been rejected without considering that it will not change the nature of the suit and it will be in accordance with the original pleadings and no party will suffer from it.
4. Having considered the submissions of learned counsel for the petitioner, I have perused the records.
5. As borne out from the pleadings and the impugned order, the suit for permanent injunction bearing Regular Suit No.373/1993 was filed by the petitioner. The petitioner had made two amendments during pendency of the suit. Thereafter, after framing of issues and evidence adduced by the parties, the suit was dismissed by means of the judgment and decree dated 11.02.2014. The petitioner filed Civil Appeal No.08 of 2014 challenging the said judgment and decree, which remained pending till 04.07.2023. It was only when the appellate court warned the parties that the appeal being one of the five oldest civil appeals pending in the court and identified under Action Plan 2023-24, therefore no further adjournment would be granted, the petitioner moved application for amendment on 04.07.2023 to delete the facts which were incorporated by the amendments made earlier and also to delete the plaint map and

substitute it by altogether new plaint map wherein a crucial omission is that "the disputed property is part of Gata No.6194", whereas considering the said pleadings made by the petitioner by way of amendment the suit was decided.

6. The appellate court, considering the arguments of learned counsel for the parties and the law on the issue found that the application has been made with malafide intention and if the application is allowed, the rights accrued in favour of the respondents would be defeated and the suit filed in the year 1993 will be relegated to its original position. The appellate court relying on Three Judge Bench case of Hon'ble Apex Court in the case of *Ram Niranjana Kajaria versus Sheo Prakash Kajaria* (SLP No.31423-31424/2010 judgment dated 18.09.2015), wherein the Hon'ble Apex Court, after referring to various earlier judicial pronouncements held that although an admission can be clarified or explained away by way of amendment however a categorical admission made in the pleading cannot be permitted to be withdrawn by way of amendment and in fact the petitioner wants to withdraw the amendment which was made during pendency of the trial, on the basis of which the suit was decided. The appellate court considering the law on the issue and the facts and circumstances of the case recorded the findings which are extracted herein-below:

"10. Keeping in view the aforementioned legal positions, now let us examine the present factual matrix. A perusal of the records, reveals that the original plaint was filed in the Year 1993 which was amended vide order dated 05.12.2001 wherein certain facts were added at the end of para 1 of the plaint. Apart from this, two new paras 6Ka and 6Kha were added and the original plaint map was deleted and completely substituted by a new plaint map. After almost 7 Years of this amendment another amendment was done in the plaint which was allowed by the Trial Court vide order dated 05.03.2008 wherein it was mentioned that the disputed property is part of Gata 6194. Thereafter, the trial of original suit continued which was on merits dismissed vide judgment/decreed dated 11.02.2014. This Civil Appeal was filed in the Year 2014 itself which was pending till 04.07.2023. It was only when in this Civil Appeal (being one of the five oldest pending Civil Appeals in this Court and identified under Action-plan 2023-24) Ld. Counsel of both the parties were cautioned that no further adjournment shall be granted to them at the stage of final arguments, that the Ld. Counsel of appellant filed this amendment application on 04.07 2023. Thus, in my considered opinion, the delay or latches on the part of the appellant-plaintiff in filing this amendment application 64A is not an ordinary normal delay or is not a benafide delay rather it comes within the purview of malafide delay because the proposed amendment had been filed to delete those facts which had been added by the plaintiff earlier by way of amendment and also to delete the plaint map and substitute it by all together new plaint map wherein a crucial omission is that "the disputed property is part of Gata No. 6194". Ld. Counsel of the respondent-defendant very rightly pointed out that the

appellant-plaintiff has purposefully and malafidely omitted this line "that the disputed property is part of Gata No. 6194" in the proposed amendment in order to withdraw their admission. A perusal of the impugned judgment/decreed dated 11.02.2014 reveals that the finding of Ld Trial Court is primarily based on this part of the pleading of plaintiff that the disputed property is part of Gata No. 6194. In such circumstances, at the final end of the disposal of the present Civil Appeal, the plaintiff can not be allowed to withdraw their admission as clearly it will cause a grave prejudice to the opposite party which could not be compensated in terms of money. Ld. Counsel of the appellant heavily relied on judicial pronouncement of Panchdeo Narain Srivastava (Supra) to argue that by way of amendment even an admission made by a party may be allowed to be withdrawn. I have carefully gone through the case law. But, this finding of Hon'ble Apex Court (Two Judge Bench finding) has been specifically overruled by a larger Three Judge Bench of Hon'ble Apex Court in Para 24 of Ram Nirajan Kajaria Vs. Sheo Prakash Kajaria [in SLP No. 31423-31424/2010 Judgment dated 18.09.2015] wherein Hon'ble Apex Court after referring to various earlier judicial pronouncements held that although an admission can be clarified or explained away by way of amendment however a categorical admission made in the pleading can not be permitted to be withdrawn by way of an amendment. Hence, the submissions of Ld. Counsel of appellant-plaintiff is liable to be rejected on this ground because in the facts and circumstances of this case, I find that by way of proposed amendment the appellant-plaintiffs, in effect, want to withdraw their categorical admission that disputed property is part of Gata No. 6194 and set-up an altogether new case by introducing entirely new pleadings with consequential amendments in relief clause which could not be permitted at this stage.

11. Malafide or bona fide nature of the proposed amendment is one of the important consideration for its acceptance/rejection. If the proposed amendment is allowed at this stage the effect would be that the litigation which was started in the Year 1993 will be relegated to its original position and all the proceedings conducted till date will be virtually nullified and a *denovo* trial will take place because naturally the defendant will be given opportunity of additional written statement and since description of disputed property in plaint is sought to be entirely altered by Clause (3) and (4) of the proposed amendment (which are closely inter-related) the matter will require framing of additional issues on which additional evidence will be required to be taken resulting in further prolongation of disposal of this case. Apart from that, this Court can not lose sight of fact that if the proposed amendment will be allowed, the invaluable rights accrued in favour of defendant by virtue of admission of plaintiff will be defeated. Also, regarding the grounds given for amendment (as explained above in amendment application 64A that the earlier counsel of plaintiff had given wrong advice to the plaintiff) it is now well settled that litigants had to face the consequences of wrong doings of their counsels. A litigant can not simply say that his earlier counsel has given wrong advice and then take a totally different position from his earlier pleading. More so when by virtue of proposed amendment, the plaintiffs-appellants want to delete those facts which had earlier introduced in the plaint by way of amendment itself. If such course of action will be allowed to happen, then the litigant will have luxury to engage another counsel at different stages of the case and introduce amendments in their pleadings on the ground of wrong advice of the

previous counsel in order to delay the trial of the case and/or to defeat the invaluable rights accrued in favour of opposite party. The mala fide conduct of plaintiffs-appellants is evident from the fact that after amending their initial pleading in Trial Court when the suit was dismissed by Ld. Trial Court on merits, then plaintiffs-appellants now want to delete all those facts earlier introduced by amendment to set up entirely new case before defendant-respondent. Naturally thus, such prayer of plaintiffs-appellants could not be allowed.

12. It is also important to note that this is not the case of appellants-plaintiffs that any new fact has come to their knowledge which could not have been brought earlier despite due diligence or that the proposed amendment is result of any subsequent event after passing of the impugned judgment/decreed. In such circumstances, the proviso of Order VI Rule 17 CPC will fully apply in this case. Hence, due to all the reasons as mentioned above the amendment application 64A of appellants-plaintiffs is liable to be rejected."

7. The appellate court has also recorded that it is not the case of the appellants-plaintiffs that new fact has come to their knowledge which could not have been brought earlier despite due diligence or that the proposed amendment is the result of any subsequent event after passing of the impugned judgment/decreed. In such circumstances the proviso of Order VI Rule 17 CPC will fully apply in this case. The appellate court has accordingly rejected the application.

8. The proviso to Order VI Rule 17 CPC provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Even otherwise, on account of the change of the advice of the counsels, the amendments cannot be moved and allowed.

9. In view of above, this Court is of the view that there is no illegality or error in the impugned order, which has been passed considering the contentions of learned counsel for the parties and law on the issues and by passing a reasoned and speaking order. The petition is misconceived and lacks merit. It is, accordingly, **dismissed**.

Order Date :- 16.12.2023

Akanksha