

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 10131 of 2016

Petitioner :- Shakeela Bano @ Shakeena Beghum And 2 Others

Respondent :- District Judge Civil Court And 6 Others

Counsel for Petitioner :- Abhishek Tiwari,Ayush Jain,Ram Prakash
Srivastava

Counsel for Respondent :- ,Ravi Chandra Srivastava

Hon'ble Rohit Ranjan Agarwal,J.

1. Sri Pramod Jain, Senior Advocate, assisted by Sri Ram Prakash Srivastava, learned counsel for the petitioners and Sri R.C.Srivastava, learned counsel for respondent No.3 are present.

2. This writ petition has been filed assailing the order dated 04.10.2016 passed by District Judge, Bhadohi in Civil Revision No.46 of 2016 and order dated 27.5.2016 passed by Additional Civil Judge (Junior Division) Bhadohi on amendment application, Paper No.64Ka, in Original Suit No.279 of 2011.

3. The facts, giving rise to present writ petition, are that the petitioner-plaintiff filed a suit for grant of permanent injunction, which was registered as Original Suit No.279 of 2011. After institution of aforesaid suit, the defendants tried to demolish the existing boundary wall from 19.10.2011, which led to filing of amendment application on 13.10.2015 under Order VI, Rule 17 C.P.C. for amending the plaint and claiming relief of mandatory injunction.

4. The said application was rejected by the trial Court against which civil revision has been preferred, which has also been rejected by the revisional Court, hence the present writ petition.

5. Learned counsel for the petitioner submits that both the Courts

below were not justified in rejecting the application on the ground of delay, because it was continuing cause of action which was initiated by defendants on 19.10.2011 and continued till filing of amendment application. According to him, para 4 of the amendment application discloses the cause of action wherein it has been specifically mentioned that demolition of wall on the property in dispute was started from 19.10.2011 which clearly indicates the date of initiation of wrong by the defendants and the relief of mandatory injunction was claimed and the plaint was being amended by the plaintiff. He has relied upon judgment of coordinate bench of this Court rendered in **State of U.P. & Ors. vs. Ashok Kumar and Ors. 2014 (8) ADJ 251** and judgement of Hon'ble Apex Court rendered in **Ragu Thilak D.John vs. S. Rayappan 2001(2) SCC 472.**

6. Sri Srivastava, counsel appearing for respondent No.3 submitted that both the Courts below had rightly rejected the application for amendment on the ground that period provided under Article 58 to the Schedule to the Limitation Act clearly provides three years' period for filing suit of mandatory injunction. According to him, an amendment was sought after period of three years as the application clearly indicates that demolition took place on 19.10.2011 and the application was moved in the year 2015 which was barred by time and it was rightly rejected by the trial Court. Reliance has been placed upon judgment of Apex Court in **Rajkumar Gurawara (Dead) vs. M/s S.K. Sarwagi & Co. Pvt. Ltd. & Anr. 2008 AIR (SC) 2393; Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. & Ors. (2012) 5 SCC 337; Ravajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors. (2009) 10 SCC 84; and Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka & Ors. (2013) 9**

SCC 485.

7. I have heard the respective counsel for the parties and perused the material on record.

8. The short controversy engaging the attention of the Court is, "whether the amendment moved by plaintiff could be allowed in the light of Article 58 to the Schedule to the Limitation Act as only period of three years has been prescribed for claiming the relief of mandatory injunction?"

9. It is an admitted case of both the parties that the suit was filed by the plaintiff-petitioner in the year 2011 in which relief for permanent injunction was claimed. At the time of filing of suit, wall in dispute was not demolished by the defendants. It was on 19.10.2011 that the demolition started and it proceeded and hence the application for amendment was moved by the plaintiff on 13.10.2015.

10. From the reading of para 4 of the amendment application, it is clear that the date disclosed in the application moved by plaintiff indicates date from which demolition commenced. It has been averred in the said paragraph that the defendants started demolishing the wall from 19.10.2011. There is no date given as to when the demolition ended.

11. Taking 19.10.2011 as the cut off date, applying Article 58 would affect the suit filed by the plaintiff as there is no denial to the fact by the defendants that the wall standing on the disputed plot was not demolished.

12. Once the Court had found that demolition started from 19.10.2011, the application for amending the plaint and adding

relief for mandatory injunction could not have been rejected solely on the technical ground that it was barred by limitation as provided in Article 58 to the Schedule to the Limitation Act, as para 4 does not disclose as to when the demolition ended.

13. The entire case set up by the plaintiff in the amendment application is that the demolition commenced from 19.10.2011. The argument raised by the petitioner's side appeal to the Court and both the Courts below had wrongly refused to allow the amendment application. It has been held in catena of cases by the Hon'ble Apex Court that the amendment should be allowed by the Courts below taking into account the subsequent development which has taken place.

14. In the instant case, it is an admitted fact that after institution of suit, the wall was demolished by the defendants. The fact as to when the entire demolition was carried out is a question of fact which has to be ascertained once the issues are framed during the trial. Only an amendment has been sought by the plaintiff to the extent that relief of mandatory injunction be granted and the defendants be directed to construct the wall.

15. It is a matter of evidence which has to be dealt with by the trial Court once the parties are permitted to lead their evidence. It is only a stage where the plaintiff is seeking an amendment to bring the real dispute before the Court below. The plaintiff has only claimed relief of permanent injunction, but, the subsequent event, which has taken place, relief of mandatory injunction has been claimed for directing defendants to make good the damages, which he had done during pendency of the suit.

16. The judgments relied upon by the defendants-respondents'

counsel is distinguishable in the facts of the case and none of the judgments, brought to the notice, would apply in the present case.

17. In the result, the writ petition succeeds and is allowed.

18. The order dated 04.10.2016 passed by District Judge, Bhadohi in Civil Revision No.46 of 2016 and order dated 27.5.2016 passed by Additional Civil Judge (Junior Division) Bhadohi are hereby set aside. The amendment application, moved by the plaintiff-petitioner, stands allowed. The Court below is hereby directed to proceed with the matter after getting the suit of the plaintiff amended accordingly.

Order Date :- 28.4.2025

Kushal