

Shambhu Nath Seth Vs. Madan Lal and anr.

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Court : Allahabad

Decided On : Nov-07-1975

Reported in : AIR1976All220

Judge : Trivedi, J.

Acts : Code of Civil Procedure (CPC) - Sections 115 - Order 6, Rule 17

Appeal No. : Civ. Rev. No. 187 of 1974

Appellant : Shambhu Nath Seth

Respondent : Madan Lal and anr.

Advocate for Def. : R.N. Trivedi, Adv.

Advocate for Pet/Ap. : H.N. Tilhari, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Trivedi, J.

1. This revision has been filed by Shambhu Nath Seth in the following circumstances:

2. Madan Lal and Barati Lal opposite parties filed a suit against him for ejection from a certain house. After evidence had been led by the parties and arguments were going to be heard defendant Shambhu Nath Seth moved an application for amendment of the written statement with a view to take a plea that the house in dispute belonged jointly to the plaintiffs and their father and, therefore, the notice served upon the defendant was invalid because father had not joined in it. This application was rejected by the Munsif on the sole ground that it was filed at a very late stage. Shambhu Nath Seth filed a revision before the District Judge, Sitapur. The revision was dismissed by the District Judge with the observation that it was not necessary to amend the pleadings because the defendant had already disputed validity of the notice in the written statement and this additional plea could also be raised in arguments.

3. I have heard Sri H.N. Tilhari for the revisionist and Sri R.N. Trivedi for the opposite parties. This is a clear case in which the courts below failed to exercise jurisdiction vested in them by law. The general rule in the matter of allowing amendment is that

all amendments are to be allowed which do not purport to set up a new case and which would not work injustice to the other side and will be necessary for the purpose of determining the real question in controversy between the parties. Keeping this general principle in view amendments cannot be refused merely on the ground of delay unless there is strong reason to think that the amendment was mala fide and was sought to be made in order to delay proceedings or prolong litigation (see A.K. Gupta & Sons v. Damodar Valley Corporation, AIR 1967 SC 96). The Munsif ought not, therefore, to have rejected amendment only on the ground of delay. The District Judge does not say anything to imply that the amendment sought by the revisionist would have changed the nature of the case originally set up in the written statement and such could not reasonably be the inference on the facts of the case. It appears that one of the plaintiffs who was examined as a witness, admitted in cross-examination that the house in dispute was purchased by the plaintiffs out of part of the money which belonged to a shop being jointly run by the plaintiffs and their father and partly from money received from their mother. This admission entitled the revisionist to take the plea that the plaintiffs were not entitled solely to maintain the suit and to get a decree for ejection without their father joining with them and also to take the plea of invalidity of the notice on the ground that it was not signed or instructed by another co-owner, namely, father. When the District Judge observed that the plea which was sought to be introduced through amendment could be raised by the defendant in arguments he completely lost sight of the fact that through amendment the defendant sought not only to challenge plaintiff's right to maintain the suit but also validity of the notice on an entirely new ground, namely, that it was not signed by all the owners of the property. The District Judge was clearly in error and failed to exercise jurisdiction which was vested in him by law and which jurisdiction ought to have been exercised by the Munsif. This revision is, therefore, entitled to succeed.

4. The revision is accordingly allowed. The order of the District Judge, Sitapur, dated 9-10-1974 and that of the Additional Munsif, Sitapur, dated 9-9-1974 are set aside. The application for amendment of the written statement of Shambhu Nath Seth defendant is allowed. The written statement shall be amended by the revisionist within time fixed by the trial court and an opportunity shall be granted to the plaintiff-respondent to file a replication if they so desire. Additional issue consequential on the amendment of the written statement shall be framed and both the parties shall be given an opportunity to adduce such evidence as they like consequent to the amendment. Parties shall bear their own costs of this revision.

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