

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1434 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

ANANDRAO MADHAVRAO SHITOLE

Versus

NAVNEETLAL MANILAL SHAH

Appearance:

MR NILESH M SHAH for Petitioner
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/11/98

ORAL JUDGEMENT

This revision is directed against an order of the Court below in HRP suit granting certain amendments prayed for by the plaintiff-respondent in the plaint.

A suit for eviction and recovery of rent etc. was filed by the respondent against the revisionist. Issues were framed which were not proper. In pursuance

of direction of this Court in Civil Revision Application No.567 of 1982 decided on 11.10.1982, an additional issue was directed to be framed by the Trial Court viz. whether there is relationship of landlord and tenant between the parties. In spite of this, issue no.6 was framed in negative terms by the Trial Court viz. whether the defendant proved that there is no relation between the parties as landlord and tenant. The trial proceeded and plaintiff's evidence was closed. Thereafter, an amendment application was moved by the plaintiff-respondent. Amendments were sought in para 3A of the plaint. The amendment application was read over to me. Para 3A of the proposed amendment shows that actually it is not amendment of the plaint but restructuring the plaint making amalgamation of the history of the case, facts, additional facts and certain provisions of the Evidence Act, Transfer of Property Act and Bombay Rent Act. Such amalgamated amendment is hardly permissible. Settled principles of law of pleadings are that pleadings should contain allegation of fact in separate para. By allowing the proposed amendment the Court below has not applied its mind to this basic principle of pleadings. It has granted amendment mainly on the ground that the proposed amendment will not change the nature of the suit and additional ground for eviction can be permitted to be raised even at a late stage. The impugned order certainly suffers from jurisdictional error viz. improper exercise of jurisdiction.

The stand of the revisionist is that there is no relationship of landlord and tenant between the parties. Further, the stand of the revisionist is that he is co-owner of the property to the extent of one-half share. It may be mentioned that a suit for declaration and injunction as Special Civil Suit No.471/84 was filed in which the respondent was party. It was suit for declaration and injunction filed by the son of the present revisionist. An appeal was filed which is said to be pending. The Trial Court has considered these facts but has failed to consider as to what are the salient features on which amendment of pleading should be allowed. Those salient features are that malafide amendment should not be granted. The amendments which are necessary for effective disposal of the real controversy between the parties can be granted and there is no bar in granting such amendment even if it is sought at a late stage. The amendment sought in this case was certainly at a late stage after closure of the plaintiff's evidence. It is true that the nature of the suit is not going to be changed by the proposed amendment

which is one of the factors to be taken into account while deciding the amendment application. It is equally true that if additional ground for eviction is available to the plaintiff, he can plead even at late stage. However, on this ground only the amendment could not be granted. When there was a specific stand of the defendant-revisionist in the Court below that there is no relationship of landlord and tenant between the parties and that he is co-owner of the property, prima facie, such plea does not amount to disclaimer of title of the landlord. It is not a case of mere denial of such relationship but additional ground was furnished why there is no relationship of landlord and tenant between the parties and for furnishing this ground the defendant revisionist pleaded that he is co-owner of the property in dispute. Such averment in the written statement prima facie does not constitute disclaimer of title. Basic question therefore is that whether there is relationship of tenant and landlord between the parties and on decision of this question the fate of the suit hinges. There is already alleged ground for eviction of revisionist. Consequently the proposed amendment was hardly essential for effective adjudication of real controversy involved in the suit. The Court below, therefore, committed manifest error of jurisdiction in granting such confused amalgamated amendment. The revision in these circumstances succeeds and is hereby allowed. The impugned order is set aside and the amendment application of the respondent is hereby rejected. No order as to costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt