

In the High Court of Judicature for Rajasthan
at Jai pur Bench, Jai pur

S. B. Civil Writ Petition No. 10413 of 2012

Kumari Bhavya -Petitioner
vs
Addl. District & Sessions Judge, No. 3, Jai pur
Metropolitan, Jai pur & Anr. -Respondents.

Date of Order :: 28. 9. 2012

Present

HON'BLE MS. JUSTICE BELA M. TRIVEDI

Mr. RB Mathur for the petitioner.
Mr. Giriraj Bardhar for the respondent No. 2.

Order

By the Court:

1. The matter has come up for consideration on the application filed by the petitioner for early listing of the petition. With the consent of the learned counsels for the parties, the petition is heard finally at the admission stage.
2. The present petition has been filed by the petitioner-plaintiff challenging the order dated 9.7.2012 passed by the Addl. District & Sessions Judge, No. 3, Jai pur Metropolitan, Jai pur (hereinafter to be referred as the "trial court") in Civil Suit No. 115 of 2011, whereby the trial court has rejected the application of the petitioner-plaintiff filed under Order VI

Rule 17 of CPC seeking amendment in the plaint.

3. The petitioner-plaintiff has filed the suit against respondent-defendant seeking partition, declaration and permanent injunction. It has been averred in the plaint inter alia that the defendant was her step father and before marrying the mother of the petitioner, the defendant had executed a writing i.e. Memorandum of Understanding (for short 'MOU') on 17.5.2009 whereby the defendant had agreed that he would take care of the plaintiff as his natural daughter and she would be entitled to her share in the movable and immovable properties including undivided family properties of the defendant. Thereafter the marriage between the mother of the petitioner and the defendant took place on 1.6.2009. However, after some time of the marriage, the dispute arose between the mother of the petitioner and the respondent-defendant. The petitioner-plaintiff therefore filed the suit seeking partition in the properties belonging to the respondent-defendant. The said suit has been resisted by the respondent-defendant by filing the written statement denying the allegations and averments made

in the plaint. However, the respondent-defendant had stated that the alleged MOU was got executed from him under undue influence by the mother of the petitioner-plaintiff before the marriage.

4. On the basis of said contention raised by the respondent-defendant in the written statement, the petitioner-plaintiff filed an application under Order VI Rule 17 seeking amendment in the plaint and praying for the specific performance of the said MOU dated 17.5.2009. The said application was resisted by the respondent-defendant by filing the reply. The trial court after considering the submissions of the learned counsels for the parties rejected the said application of the petitioner vide the impugned order.
5. It has been submitted by learned counsel Mr. RB Mathur for the petitioner that the proposed amendment was sought by the petitioner in view of the admission made by the respondent-defendant in the written statement about execution of the MOU in question. Taking the court to the contents of the plaint, he submitted that the relief of partition of the properties was based on the very MOU as mentioned in the plaint itself, the execution of which is,

as such is admitted by the respondent-defendant in his written statement. However, the learned counsel Mr. Giriraj Barhdar for the respondent-defendant submitted that by the proposed amendment, the very nature of the suit would be changed inasmuch as the suit for partition is sought to be converted into the suit for specific performance of MOU, which is not permissible. Learned counsel for the respondent-defendant has relied upon the decisions of the Apex Court in the case of *Van Vibhag Karmachari Griha Nirman Sahkari Sanstha Maryadi t (Regd.) vs Ramesh Chander and Ors (AIR 2011 SC 41)* and *M/s Revajeeetu Builders and Developers vs M/s. Narayanaswamy and Sons and Ors. (AIR 2009 SC (Supp.) 2897)*, in support of his contention.

4. Having considered the submissions of learned counsel for the parties and documents on record, it appears that the petitioner-plaintiff has filed the suit for partition, declaration and permanent injunction on the basis of the Memorandum of Understanding dated 17.5.2009 executed by respondent-defendant before marrying the mother of the petitioner. It is pertinent to note that in the written

statement of respondent-defendant has not denied the execution of the said document, however has stated that the said document was got executed by the mother of the petitioner under undue influence and duress. Be that as it may, the proposed amendment has been sought by the petitioner in the plaint seeking specific performance of the said MOU in question, which MOU was already made the basis in the plaint for claiming the relief of partition and declaration. Under the circumstances, it could not be said that by such amendment, the plaintiff was trying to introduce a new case, changing the nature of the suit. It is also further pertinent to note that the amendment was sought immediately on the filing of the written statement by the defendant, even when the issues were not framed by the court. Under the circumstances without entering into the merits of the amendment sought, this court is of the opinion that the amendment application filed by the petitioner-plaintiff deserves to be allowed.

5. There cannot be any disagreement to the proposition of law laid down by the Apex Court in the judgments relied upon by the

Learned counsel for the respondent-defendant, however the same are not applicable to the facts of the present case. In case of Van Vibhag Karmachari Griha Nirman Sahkari Sanstha (supra), the amendment sought was after a period of 11 years of filing of the suit and therefore not allowed being barred by limitation, and in case of M/s Revajeeetu Builders (supra), the plaintiff was trying to introduce totally new case, changing the entire character of the plaintiff. Such is not the situation in the instant case. As stated above, the plaintiff has based her claim in the plaint on the MOU, and has sought amendment immediately after filing the written statement by the defendant. The suit being at the nascent stage, the respondent defendant shall have an ample opportunity to lead the evidence, and hence no prejudice is likely to be caused to the defendant, if the proposed amendment is allowed.

5. In that view of the matter, the petition deserves to be allowed, the impugned order dated 9.7.2012 passed by the Addl. District and Sessions Judge, No. 3, Jaipur Metropolitan, Jaipur in Civil Suit No. 115 of 2011 is set aside. The application of

the petitioner seeking amendment under Order VI Rule 17 of CPC is allowed. It is needless to say that the respondent-defendant shall be at liberty to file additional written statement to the amended plaint. The petition stands allowed accordingly.

(BELA M. TRIVEDI) J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Om Prakash
PA