

(2012) 03 AHC CK 0251

Allahabad High Court

Case No: C.M.W.P. No. 12067 of 2012

Rama Nand and others

APPELLANT

Vs

Amrit Lal and othes

RESPONDENT

Date of Decision: March 26, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2012) 4 AWC 4345

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: Satyam Singh and Shiv Nath Singh, for the Appellant;

Final Decision: Dismissed

Judgement

A.P. Sahi, J.

The petitioners are the defendants in a suit filed by the respondent-plaintiffs for permanent injunction. The suit was filed in the year 1988 and has been continuing for 22 years. The plaintiffs had sought an amendment in the plaint on at least three occasions. The first amendment had been allowed in 1992. The other amendment which was filed in relation to a fact that had intervened during the pendency of the suit, namely, an allegation that during the pendency of the suit defendants had encroached upon the disputed land further by setting up a Maraha (thatched roof). This application under Order VI, Rule 17 was moved in the year 2001 and was allowed on 4th September, 2001. The suit proceeded thereafter and after the close of evidence and cross-examination, the petitioners who are the defendants, moved an application on 3.4.2010 praying for an Indulgence to file an additional written statement. This application for leave to file an additional written statement has been rejected on 19.5.2011 and the revision filed against the same has been dismissed on 31.1.2012. Aggrieved by these orders, the defendants are in this writ petition before this Court.

2. Sri. Shiv Nath Singh, learned counsel for the petitioners submits that the Court should take a liberal view and allow an amendment sought at any stage of the proceedings. The defect of not filing an additional written statement arose on account of ignorance of the petitioners who are not well versed in law and also on account of lack of proper legal advice or wrong advice of the counsel. It is urged by Sri. Shiv Nath Singh that at the stage of final arguments when the petitioners engaged another counsel Mr. Ram Adhin Maurya, he after an inspection of the entire file at the time of final argument advised them, that a mistake has been committed by not filing an additional written statement. Based on this legal advice, the application seeking leave to file additional written statement was moved.

3. An objection was taken by plaintiffs-respondents to the aforesaid application filed by the petitioner-defendants, and the trial court came to the conclusion that the suit has been pending for the past 22 years and three amendments had been sought in the plaint for which time had been sufficiently granted to the defendants to file additional written statement, but their lawyer specifically on 30th October, 2007 made an endorsement that he does not propose to file any additional written statement in relation to the amendment allowed on 4.9.2001. The trial court, therefore, came to the conclusion that this application has been filed mala fide with a view to prolong the proceedings and to impede the decision of the trial court as more than sufficient opportunity was available to the defendants to file written statement which they had consciously abandoned through their lawyer. In such a situation, the application was liable to be rejected and accordingly, the trial court passed the order on 19.5.2011.

A revision was filed against the same and the order has been affirmed.

4. Having heard Sri. Shiv Nath Singh the facts of this case leaves no room for doubt, that the petitioners who are the defendants were duly represented by a lawyer for the past several years, who consciously made an endorsement on 30.10.2007 that he does not want to file any additional written statement. The evidence was led thereafter and the witnesses were cross-examined. It is after some new lawyer who was engaged at the time of hearing that dawned on the petitioners that a mistake has been committed by not filing an additional written statement. The mistake of the lawyer of the petitioners as alleged, in my opinion, is not a mistake at all. It was a conscious endorsement by the lawyer not to file an additional written statement. Apart from this, the evidence with regard to the plea raised in the amended plaint has been adduced by the defendants. Thus, they cannot plead either mistake on behalf of the lawyer or on their behalf also. The petitioners cannot be permitted to raise a plea that their lawyer on a wrong advice made the endorsement. If this is condoned, then in every case a litigant will unscrupulously come forward with this plea and get the case reopened on one pretext or the other. The subsequent engagement of a counsel who has a better understanding of law cannot be a ground to plead that the earlier counsel was incompetent, particularly, in this case

where an endorsement in writing has been made by the lawyer that he does not wish to file any additional written statement. In the aforesaid circumstances and the facts on record, the plea that the court should have taken a liberal view for filing an additional written statement does not arise at all.

The writ petition lacks merit and is hereby dismissed.