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**(2014) 07 AHC CK 0122**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Misc. Single No. 3522 of 2014

Shafiq Mirza

APPELLANT

Vs

Addl. District Judge

RESPONDENT

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**Date of Decision:** July 8, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, Order 7 Rule 11, 10, 11

**Citation:** (2014) 106 ALR 781

**Hon'ble Judges:** Ram Surat Ram (Maurya), J

**Bench:** Single Bench

**Advocate:** Narendra Gupta, Advocate for the Appellant; Manish Kumar, Advocate for the Respondent

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### **Judgement**

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Ram Surat Ram (Maurya), J.

Heard Sri Narendra Gupta for the petitioner and Sri Nripendra Mishra holding brief of Sri Manish Kumar for the respondents 3 and 4. The writ petition has been filed against the order of Civil Judge (Senior division) dated 15.3.2014 allowing the amendment application filed by respondents 3 and 4 for amendment of the plaint and the order of Additional District Judge dismissing the revision by order dated 30.5.2014.

2. Respondents 3 and 4 filed a suit (registered as Suit No. 229 of 2014) for permanent injunction against the petitioner in respect of property, description of which has been given by mentioning a boundary in the plaint. During pendency of the suit, the petitioner filed an application for impleading his mother Smt. Anis Fatima as the defendant in the suit. In the meantime, the plaintiff also filed an application under Order VI, Rule 17, C.P.C. in which two amendments were sought,

first amendment was for impleadment of Anis Fatima as defendant-2 and second for describing the property in dispute as a part of plot No. 1591. It has also mentioned that plot No. 1591 and other plots belong to Swami Guru Nanak Vidhak Sabha in the margin of application, the Counsel appearing for the plaintiff made an endorsement that copy of the application was refused by the defendant as such copy was attached alongwith the application. Thereafter the arguments were heard by the Trial Court and the Trial Court on the same day allowed the amendment application. The petitioner filed a revision (registered as revision No. 19 of 2014) which was dismissed by the Additional District Judge by the order dated 30.5.2014 holding that the revision is not maintainable. Hence this writ petition has been filed.

3. The Counsel for the petitioner submits that the plaintiff's Counsel has falsely made an endorsement in the application that acceptance of the copy of the amendment application has been refused. The petitioner was thus not provided the copy of the amendment application nor given any opportunity to file his objection to the amendment application. The petitioner has already filed an application for impleadment of Smt. Anis Fatima as defendant-2 as such the Counsel for the petitioner was misguided with the amendment application in which one of the amendment was for impleadment of Smt. Anis Fatima but it was imperative for the Trial Court for giving opportunity to file an objection in the amendment application but the amendment application has been allowed without giving any opportunity to file objection and the revision has been dismissed as not maintainable. He further submits that by the amendment application plot No. 1591 was inserted although the boundary of the disputed property remain the same which was the boundary of plot No. 1578 belonging to the petitioner, thus by changing this description, the nature of the property in dispute has been changed. There is already a dispute in respect of plot No. 1591 and the matter is pending before this Court as such fresh suit in respect of the same property cannot be filed. In such circumstances, the amendment application could not be allowed by the Trial Court.

4. I have considered the arguments of the Counsel for the petitioner and examined the record. Order VI, Rule 17, C.P.C. provided that:

Amendment of pleadings.--The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

The proposed amendment is covered under first clause of Order VI, Rule 17, C.P.C. it was well within the jurisdiction to the party to alter or amend his pleadings. The merit of the case is not to be examined at the time of allowing the amendment application. In case the property in dispute is not co-related with the actual plot on the spot or it is the second proceeding and is barred under section 10 of 11 C.P.C., it is open for the petitioner to file an application under Order VII, Rule 11, C.P.C. for rejection of the plaint but on this ground the amendment cannot be refused. So far

as the arguments of the Counsel for the petitioner that petitioner was not given opportunity to file the objection, is concerned, acceptance of the copy of the application has been denied by the petitioner and the Counsel for the plaintiff has made endorsement in this respect in the application. The petitioner has not made any formal request before the Trial Court nor filed any application that the endorsement was false or prayed for time for filing objection, as such this Court will not allow the petitioner to challenge the endorsement made by the Counsel for the plaintiff at this stage. The next argument of the Counsel for the petitioner that the matter relating to plot No. 1591 is sub-judice before this Court, is concerned, as stated above, it may be a ground for staying the suit under section 10, C.P.C. but it is not a ground for rejecting the amendment application. The impugned orders do not suffer from any illegality.

The writ petition is dismissed.