

Pradeep Kumar Agarwalla and Ors Vs. Hridaya Narayan Lal and Anr

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Court : Jharkhand

Decided On : Jul-31-2017

Appellant : Pradeep Kumar Agarwalla and Ors

Respondent : Hridaya Narayan Lal and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No. 3296 of 2007

1. Pradeep Kumar Agarwalla, son of Late Ram Chandra Agarwalla

2. Smt. Parmeshwari Bai

3. Bina Agarwal

4. Rina Agarwal

5. Meena Agarwal Sl. No. 2 to 5 all daughters of Late Ram Chandra Agarwalla

6. Geeta Devi, widow of Late Ram Chandra Agarwalla Sl. No. 1 to 6 all resident of Purana Bazar, P.O. & P.S. Dhanbad, DistrictDhanbad ... Petitioners Versus

1. Hridaya Narayan Lal, son of Sri Ram Sewak Ram, by faith Hindu, by OccupationService, resident of Bhuli, Qr. No. 54, Block E, P.O. & P.S.Bhuli, DistrictDhanbad

2. Triloki Nath Mishra, son of Suraj Nath Mishra, by faith Hindu, by occupation Service, resident of Gandhi Nagar, P.S. Dhansar, District Dhanbad ... Respondents CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR For the Petitioners : Mr. Ayush Aditya, Advocate Mr. Abhishek Piyush, Advocate For the Respondents : Mr. Indrajit Sinha, Advocate Mr. Vipul Poddar, Advocate Order No. 15 Dated: 31.07.2017 Heard the learned counsel for the parties.

2. The present writ petition has been filed for quashing the order dated 19.05.2007 passed by the learned Additional Munsif, Dhanbad in Title Suit No. 20 of 1991, whereby the application filed by the defendant no. 1 (respondent no.1) under order VI, Rule 17 read with Section 151 C.P.C. has been allowed.

3. The factual matrix of the case as stated in the writ petition is that the land under Khata No. 116, Plot No. 1952, Area 66 decimals of Mouza Dhanbad was originally recorded in the name of Mansa Ram Mahto. He sold the said land to Smt. Manbhawati Devi by way of registered sale deed dated 29.04.1948, who came in possession of the same. Smt. 2 Manbhawati Devi died leaving behind the plaintiffs/petitioners and as such, the petitioners came in possession of the land. On 06.02.1991, the defendants/respondents started claiming right, title and interest over the part of the plot (3 katha) of land. Thereafter, the petitioner filed Title Suit No. 20 of 1991 in which the respondent no. 1 appeared and filed written statement by stating that the land on which he is in possession belonged to one Govind Ram Mahto and after his death, Kartik Mahto being his son, came in possession and constructed boundary wall and shed. Said Kartik Mahto transferred the said land to Smt. Lachhu Devi and Sri Ramdeo Prasad by way of registered sale deed dated 10.06.1985 and thereafter, the said land was sold to the respondent no. 1 by registered sale deed dated 05.06.1989 and his name was also mutated before the Circle Officer, Dhanbad.

4. Thereafter, the trial started and the plaintiffs examined all his witnesses and the defendant also examined four witnesses. In the meantime, the respondent no. 1 filed a petition under Order VI Rule 17 read with Section 151 C.P.C. for inserting a schedule in the written statement with details of Plot No. 1952 of Khata No.

121. The learned Additional Munsif, Dhanbad vide order dated 19.05.2007 allowed the amendment petition on the ground that the plaintiffs have given the same description of the land of the defendants at paragraph no. 11 of the plaint and as such, neither new cause of action would arise in favour of the defendants nor the amendment would adversely affect the interest of the plaintiffs.

5. The learned counsel for the petitioners submits that the learned Additional Munsif, Dhanbad committed an error in allowing the application filed by the respondent no. 1 under Order VI Rule 17 read with Section 151 C.P.C., as the same was filed at a very belated stage when the evidence of the plaintiffs (petitioners therein) was already closed and 4 witnesses were also 3 examined on behalf of the defendants (respondents therein). Learned counsel for the petitioners further submits that paragraph no. 5 of the application filed by the respondent no. 1 under Order VI Rule 17 read with Section 151 C.P.C. itself discloses that the description of the respondents' purchased land does not tally with schedule B land of the plaint and, therefore, there was no occasion for the learned Additional Munsif to entertain the said application filed by the respondent no. 1 for amendment of the written statement by inserting a schedule of the land which pertained to Khata No.

121.

6. The learned counsel for the respondents submits that the learned Additional Munsif vide order dated 19.05.2007 has clearly dealt with the factual issue and thereafter, came to a finding that by proposed amendment, the respondent no. 1 has sought insertion of schedule to the written statement regarding the details of the Plot No. 1952, Khata No. 121 and accordingly, it has been held inter alia that no new cause of action would arise in favour of the defendants/respondents nor the amendment would spring a surprise over the plaintiffs/petitioners and, hence, the amendment sought by the respondent no. 1 was allowed.

7. Having heard the learned counsel for the parties and considering the documents placed on record, it appears that the respondent no. 1 filed an amendment application under Order VI Rule 17 read with Section 151 C.P.C. seeking addition of the schedule of property situated in Mouza Dhanbad (Mouza

No. 51), Khata No. 121, part of Plot No.1952, measuring an Area of 4 Kathas of land. In paragraph no. 5 of the said amendment application, the respondent no. 1 has stated that the description of the defendant's purchased land does not tally with the scheduleB land of the plaint and, hence, it is necessary for the defendant no. 1 (respondent no. 1 herein) to incorporate the description of his purchased land in the schedule of his written statement. 4 Appreciating the said fact, the learned Additional Munsif, Dhanbad vide impugned order dated 19.05.2007 held that the plaintiffs at paragraph no. 11 of the plaint has stated that the sale deed of the defendant no. 1 relates to the plot pertaining to Khata No. 121. Though the plot numbers in the saledeeds of both the parties are same i.e., 1952, the khata numbers are different. The learned Additional Munsif further held that the proposed amendment will not give rise to any new cause of action in favour of the defendants nor the same will cause any prejudice to the case of the plaintiffs and, thus, the amendment application for inserting a schedule in the written statement filed by the respondent no. 1 was allowed vide impugned order dated 19.05.2007.

8. The object and purpose of Order VI Rule 17 C.P.C. (after amendment by Act 22 of 2002 w.e.f. 01.07.2002) has been discussed by the Hon'ble Supreme Court in catena of judgments. For the purpose of of illustration, the relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in *Surender Kumar Sharma Vs. Makhan Singh* reported in (2009) 10 SCC 626, are reproduced as under: 5. As noted hereinearlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for 5 amendment cannot be a ground to refuse the amendment. 6. It is also well

settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise. (See B.K. Narayana Pillai v. Parameswaran Pillai¹.) Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed. 7. So far as the second ground is concerned i.e. the prayer for amendment of plaint, if allowed, shall change the nature and character of the suit, we are unable to accept this view of the High Court. We have carefully examined the amendment prayed for and after going through the application for amendment of the plaint, we are of the view that the question of changing the nature and character of the suit, if amendment is allowed, cannot arise at all. The suit has been filed for eviction inter alia on the ground of arrears of rent. It cannot be disputed that even after the amendment, the suit would remain a suit for eviction. Therefore, we are unable to agree that if the amendment of the plaint is allowed, the nature and character of the suit shall be changed. Accordingly, the High Court was not justified in holding that the nature and character of the suit shall be changed, if such prayer for amendment is allowed. 9. In the case of B.K. Narayana Pillai Vs. Parameswaran Pillai reported in (2000) 1 SCC 712, the Hon'ble Supreme Court has held as under: 4.The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are 6 necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed

amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

10. It is a settled law that the court may allow the amendment in the pleadings of either party if such amendment is found necessary for the purpose of determining of real question in controversy between the parties. However, if the trial has commenced, the party seeking the amendment has to show that in spite of due diligence, the party could not raise the matter before the commencement of the trial. The Hon'ble Supreme Court in the case of *Surender Kumar Sharma Vs. Makhan Singh* (supra) has held that a belated application for amendment of the pleading is not liable to be rejected merely on the ground of delay, if the court finds that by allowing the said application, real controversy between the parties may be resolved. It has further been held that the court can allow the amendment application where no prejudice is caused to the other party and the same can be compensated by awarding cost to the party seeking amendment at belated stage.

11. Coming back to the facts of the present case, it is evident that the respondent no. 1 has sought amendment seeking insertion of a schedule of the land pertaining to Khata No. 121, whereas the plaintiffs/petitioners in the schedule B of their plaint 7 have given the description of the Plot No. 1952 in Khata No. 116. Thus, in my considered view, the said amendment sought by the respondent no. 1 would neither change the issue to be determined in the suit nor would cause any prejudice to the plaintiffs/petitioners. However, considering the fact that the said application under Order VI Rule 17 read with Section 151 C.P.C. was filed at a quite belated stage by the respondent no. 1, I direct the defendant no. 1/respondent no. 1 to pay a cost of Rs.5,000/- to the plaintiffs/petitioners on the next date fixed in the suit. 12. The impugned order dated 19.05.2007 being completely justified needs no interference by this Court. The writ petition filed by the petitioner is accordingly dismissed. It is expected that the learned trial court shall make all possible endeavour with the cooperation of the parties to decide the

suit as expeditiously as possible without giving undue adjournment in the case.
(Rajesh Shankar, J.) Manish/A.F.R.

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