

Gama Vs. Spl. Judge

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Court : Allahabad

Decided On : Oct-19-2012

Judge : Sunita Agarwal

Appeal No. : Writ - C No. 9288 of 2001

Appellant : Gama

Respondent : Spl. Judge

Advocate for Def. : Shri. Namwar Singh

Advocate for Pet/Ap. : Shri. M.N. Singh

Judgement :

1. THE above mentioned two writ petitions are against the judgment and order dated 15.2.2001 passed by Special Judge (A.C.)/Additional District and Sessions Judge Varanasi in civil revision no. 284 of 1999 arose out of original suit no 1189 of 1995 (Gama Vs Rama) and civil revision no. 285 of 1999 arose out of original suit no. 1190 of 1995 (Shyam Lal Vs. Rama) raises common question of law to be decided by this court. As such both the writ petitions were heard together and are being decided by common judgment The facts giving rise to the controversy in the present two writ petitions mentioned above are that the suits were filed by the petitioners against the defendant -respondent(Rama) seeking relief that the defendants be directed to execute sale deed in respect of land mentioned in the schedule of the plaint in lieu of the land which was sold to them by registered sale

deed dated 2.5.1984 The case of the petitioners is that Rama son of Raju i.e defendant/respondent no.3 executed two registered sale deeds of the same date i.e 2.5.1984 asserting himself to be a Bhumidhar of the land, which was subject matter of sale deeds, after taking adequate consideration. The plaintiff's case is that they have entered into possession of the land which were subject matter of the two sale deeds. However, in the month of June 1995 they came to know that land sold to them was Gaon Sabha property. Thereafter they confirmed the fact from the record and after satisfying themselves they asked the defendant (Rama) to return the sale consideration given by them along with other expenses incurred in execution of sale deeds dated 2.5.1984. Two notices were given on 12.7.1995 and 15.7.1995 by the petitioners. In reply given to the notice the defendant-responder no.3 denied the assertions made therein and finally on 30.10.1995 he refused to pay back the amount of consideration along with other expenses as also the request of the plaintiffs to execute another fresh sale deed in lieu of consideration received by him.

2. IN the written statements filed by the defendant-responder in both the suits he denied the claim of the plaintiffs. The amendment applications were filed in both the suits along with affidavit by which paragraph 17 Ka was sought to be added to the effect that amount of sale consideration along with interest be realised from the defendant. The relief clause in the plaint was sought to be amended which is paragraph-17 and prayer for recovery of sale consideration from the defendant responder given under the sale deed dated 2.5.1984 was sought for. The amendment application was allowed by order dated 15.9.1999 passed by the trial court. Aggrieved by the order dated 15.9.1999, defendant-responder filed revision before the court of Additional Sessions Judge Varanasi i.e. responder no.1. The revision was allowed by the judgment and order dated 15.2.2001. The pleading, grounds of challenge for the rejection of the amendment application by the plaintiffs/petitioners in both the petitions are one and the same. Both the writ petitions are filed against the judgment allowing the revision and rejecting the amendment application filed to amend the relief clause of the plaint.

It may be noted that both the writ petitions were admitted and interim orders dated 27.3.2001 was passed in writ petition no. 10938 of 2001 and 11.3.2005 was

passed in writ petition no. 9288 of 2001 staying further proceedings in original suit no. 1190 of 1995 and 1189 of 1995; respectively. The stay vacation application along with counter affidavit was filed. The matter was heard in detail and is being decided finally with the consent of both the parties. Heard Shri M.N. Singh, learned counsel for the petitioners and Ms. Minakshi Singh holding brief of Shri Namwar Singh, learned counsel for the respondent.

Learned counsel for the petitioners submits that amendment sought by the petitioners was such that would not have changed the nature of controversy involved in the present suit and was in order to give substantial justice to the petitioners and further avoiding multiplicity of litigation. While elaborating his arguments, the counsel for the petitioners submits that there were enough pleadings on record as in paragraph-13 of the plaint, it has been specifically stated that defendant is liable to refund the sale consideration and other expenses incurred in execution of sale deed. He further submits that in paragraph-9 of the plaint the reliance has been placed on clause -3 of the sale deed dated 2.5.1984 which clearly provides that in case of any hurdle in the plaintiffs' right and possession over the land sold, plaintiffs can realize the sale consideration along with interest. He further submits that ground taken for allowing the revision and dismissing the amendment application for amending the relief clause of the plaint taken by the revisional court is hyper technical.

3. THE revisional court has committed material irregularity and illegality in setting aside the judgment and order dated 15.9.1999 passed by the trial court solely on the ground that amendment is barred by Article 47 of the Limitation Act 1963(hereinafter referred to as the Act.)He further submits that there is no denial of the sale deed executed between the parties and vendor of the sale deed i.e. defendant respondent had agreed that in case any difficulty arises in getting the possession of the land which is the subject matter of the sale deed, the vendees would be entitled for refund of sale consideration with interest. The defendant respondent is under legal obligation to return the sale consideration. The order passed by the trial court allowing the amendment was legal, just and proper .The revisional court had wrongly exercised its jurisdiction in rejecting the amendment application.

Learned counsel for the petitioners placed reliance on judgment of Apex Court and this court reported in 2006 (6) SCC 498 Baldev Singh and others Vs. Manohar Singh and another; 2006(4) SCC 385 Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others; 2003 (4) AWC 2889 Mishri Singh Vs. Illrd Additional District Judge, Bijnor and others; 2012 (2)ADJ 550, Pratap Singh Vs. Ram Charan, to substantiate his arguments that it is well settled principle that court should be liberal in allowing amendment on pleading unless serious injustice, irreparable loss is caused to other side. He further submits that while placing reliance on the paragraph-15 of the Apex Court judgment in Rajesh Kumar Aggarwal and others (supra)it was held that objects of the Order VI rule 17 C.P.C. is that court should try the merits of the case that come before them and should, consequently, allow all the amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. He further submits that in paragraphs 7 and 8 of judgment of this court in Mishri Singh placing reliance on the judgment of Apex court in B.K. Narain Pillai Vs. P. Pillai and another reported in JT 1999 (10) SC 61 it has been held that courts are not only under a bounden duty to see that justice is done but are also under bounden duty to see that injustice is not done to any party. He submitted that in Pratap Singh (supra) it has been held that as contract of agreement was discovered to be void for not being in writing, the defendant was bound to return the amount received by him and to compensate for the same.

4. THE submits that plaintiff has also pleaded in the plaint that they are entitled to get refund the amount of sale consideration along with other expenditure incurred by them in execution of the sale deed with interest. By amendment application only relief clause was sought to be amended so as to avoid multiplicity of proceedings and seek ultimate justice. Repelling the submissions of the learned for the plaintiff/petitioner, learned counsel for the defendant respondent relied upon the judgment reported in 2004(2) AWC 1514 (SC) T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and others; 2008(3) AWC 2384 (SC) Ashutosh Chaturvedi Vs. Prano Devi alias Parani Devi and others; 1996AWC 724 (SC) Radhika Devi Vs. Bajrangi Singh and others to submit that as a rule, the court will decline to allow amendment for a fresh suit on the amended claim, if it had become barred by limitation on the date of application. She further submits that

period of limitation provided under Article 47 of the Act is to be strictly applied in the present case and amendment sought being beyond period of three years could not have been allowed by court below . The revisional court has rightly set aside the order passed for amendment of prayer clause in the plaint.

Having perused the record and rival submissions of the learned counsel for the parties, it is apparent that suit was filed by the petitioner/plaintiffs to execute sale deed of the property mentioned in the schedule in lieu of earlier sale deed dated 2.5.1984 for the reason that the sale deed was executed for a land of which defendant respondent did not have any title. Further Clause 3 of the sale deed dated 2.5.1984 is relevant and quoted below:-

...[vernacular text omitted]..... A careful perusal of the judgment of the trial court as well as the revisional court shows that amendment was allowed by the trial court keeping in mind that pleadings are on record and only relief part is to be amended and in case amendment sought is refused it would be result in grave injustice to the plaintiffs and further would be appropriate for adjudication of suit between the parties and would avoid multiplicity of the proceedings and will give substantial justice to both the parties.

On the other hand, revisional court simply allowed the revision and set aside the judgment of the trial court with the observation that as suit was filed in the year 1995 and three years have passed from the date of failure of existing consideration, time beings from the date of failure which is three years under Article 47 of the Act and as such relief sought to be claimed by way of amendment is barred by time. The approach of the revisional court is hyper-technical. It is true that court may decline the amendment sought after expiry of the period of limitation prescribed in law but there is no straitjacket formula for allowing or disallowing an amendment of pleadings. The question is whether in the given case where the delay has been caused it will extinguish the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in exercise of its discretion take away the right accrued to another party by allowing such belated amendments. Further question is that whether rejection of the amendment application would result in serious prejudice caused to the parties and whether

amendment sought was only a relief in furtherance to the plea found in the plaint.

5. THE legal position as held by the Apex Court in (2004) (6) SCC 415 Pankaja and another Vs. Yellappa and others, following judgment in LJ Leach and Co. Ltd. and another Vs. Messrs. Jardine Skinner and Co. AIR 1957 SC 357 and T.N. Alloy Foundry Co. Ltd.(supra) in paragraphs 14 and 16 are as follows:-

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case." "16.This view of this Court has, since, been followed by a three Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors. 2004 (3) SCC 392. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice."

6. THE Apex court in L.J. Leach and Co. Ltd. and another(Supra) has held in paragraph-16 which reads as under :-

"It is no doubt, true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice."

In the facts of the present case, stand taken by the plaintiffs since the beginning was they are entitled for refund of the sale consideration plus interest along with other expenditures incurred by them. There is specific pleadings to that effect in paragraph-14 of the plaint and clause -3 of the sale deeds as mentioned above also support the case of the petitioners. Applying the principle as laid down by the Apex court followed by this court in various judgment it appears that revisional court has proceeded on an assumption that the amendment sought by the petitioner is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original suit. Necessary factual basis having been laid in the plaint in regard to the relief sought by way of amendment in the present case, leads to an irresistible conclusion that amendment sought by the plaintiff in the relief clause of the plaint would subserve the ultimate cause of justice avoiding further litigation, and, therefore, the same should be allowed.

In view of the foregoing discussion, the judgments and orders dated 15.9.1999 passed by Additional Civil Judge, (J.D.) Hawali, Varanasi in both suits allowing the amendment sought by the plaintiffs are hereby affirmed. The judgments and orders dated 15.2.2001 passed by the Special Judge(A.C.)/Additional District and Sessions Judge Varanasi in both revisions are hereby set aside. As the proceedings in suits of the year 1995, have been stayed since 2001, it is therefore, directed that the trial court shall proceed with the suits making endeavour to decide the same as early as possible preferably within a period of one year from the date of passing of the order by this court without granting unnecessary adjournment to both the parties. Both the writ petitions succeed and are allowed, with the observations made above.

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