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Court : Guwahati

Decided On : Jan-11-2002

Judge : H.K.K. Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : C.M. Appeal Nos. 49 and 51 of 2000 in RSA Nos. 15 and 16 of 2000

Appellant : Anjali Devi Thapa and ors.

Respondent : Sandhya Debi Thapa

Advocate for Def. : A.K. Deb and K. Deb, Advs.

Advocate for Pet/Ap. : A.M. Lodh, A. Lodh, M. Dutta and A. Dey, Advs.

Prior history : H.K.K. Singh, J. 1. These two civil misc. applications bearing Nos. 49 of 2001 and 51 of 2001 are heard analogously and disposed of by this common order. 2. The plaintiff-respondent in both the applications filed a suit for declaration of title and mandatory injunction against the respondent-petitioners. Now the stage of the suit is at the second appeal stage. Originally the suit was decreed and the decree came in appeal and in second the appeal suit was remanded. The suit was again decreed

Judgement :

H.K.K. Singh, J.

1. These two civil misc. applications bearing Nos. 49 of 2001 and 51 of 2001 are heard analogously and disposed of by this common order.

2. The plaintiff-respondent in both the applications filed a suit for declaration of title and mandatory injunction against the respondent-petitioners. Now the stage of the suit is at the second appeal stage. Originally the suit was decreed and the decree came in appeal and in second the appeal suit was remanded. The suit was again decreed after remand. Against the decree both the plaintiffs and the defendants filed appeals and both the appeal were decided in favour of the plaintiffs. Now the defendants have filed two second appeals which have been registered as R.S.A. No. 15/2000 and R.S.A. No. 16/2000. In the midst of hearing of the aforesaid two appeals which arose out of the same original decree, the plaintiff-petitioner herein has filed two separate applications praying for the same relief, i.e., amendment of the plaint.

3. The proposed amendment is in respect of schedule of the suit land appended to the plaint. The proposed amendment is reproduced below :-

'At the last page of the plaint in Schedule-A after the words Agartala Sheet No. 6, the words 'Khatian 4724' be deleted and substituted by 'C.S. Khatian No. 1837', C.S. Plot No. 4712 measuring 144 acres.'

4. According to Mr. A.K. Bhowmik, the learned senior counsel appearing on behalf of the respondent-plaintiffs the amendment sought for is only correction of some words and figures in order to give correct description of the suit land and as such even at the stage of second appeal the amendment may be allowed.

5. Mr. A.M. Lodh, the learned senior counsel appearing on behalf of the appellant-defendants has vehemently submitted that the amendment has been sought at the last stage of hearing (part heard) in this second appeal stage. The learned counsel has further submitted that the amendment sought for, if allowed will revive a cause which has been barred by limitation and further that amendment should not ordinarily, be allowed to fill up lacuna appearing in the case of the party.

6. Law relating to the stage at which amendment of pleading may be allowed has been clearly settled on a number of decisions right from the days of Privy Council. So, the fact that amendment sought for at the second appellate stage is not per se a ground for rejecting the same. Generally amendment may be allowed if the court is of the opinion that it is necessary for the purpose of determining the real questions in controversy between the parties. The dominant purpose of Order 6 Rule 17 of C.P.C. is to minimise litigation so that real controversy may be decided once for all. Though it is true that if a plaintiff seeks to alter the cause of action and introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action, the court may refuse amendment sought for if it amounts to depriving the party against whom the suit is pending of any right which may have accrued in its favour due to lapse of time. Again, due to amendment an entirely new and different cause of action should not be permitted to be brought in so that it may cause multifariousness or mis-joinder of cause of action in the suit.

In our present case, according to Mr. Lodh, the learned senior counsel amendment sought for bringing a new cause of action which has been barred by lapse of time, has not substance. I say so as the amendment sought for is in the nature of furnishing fuller and better particulars regarding the description of the suit properly. According to the plaintiff-respondents there was a mistake in quoting the Khatian Number and C.S. Plot Number. Hence the amendment has become necessary. As the law of pleadings regarding suit relating to immovable property mandates that suit property should be properly defined by giving survey Number etc. if there be any for better identification so that it may not cause any inconvenience at the time of execution etc. Here a recent decision of the Supreme Court in the case of Raguthilak D. John v. S. Rayappan and Ors. reported in (2001) 2 SCC 472 relied upon by Mr. A.K. Bhowmik may be referred to. In the aforesaid case the Apex Court after referring to a number of decisions of Apex Court as well as of Privy Council held at para 5 as follows :-

'After referring to the judgments in Charan Das v. Amir Khan, L.J. Leach & Co., Ltd. v. Jardine Skinner & Co., Ganga Bai v. Vijay Kumar, Ganesh Trading Co. v. Moji Ram and various other authorities, this Court in B.K. Narayana Pillai v.

Parameswaran Pillai held : (SCC p. 715 para 3).

'3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.'

7. In the case in hand, the matter being furnishing of fuller and better particulars of suit property, I am of the opinion that even at the stage of second appeal the prayer for amendment may be allowed. Accordingly the amendment sought for is allowed subject to payment of Rs. 500 (five hundred) by the petitioners to the other side within a period 15 days from today. On payment of the aforesaid costs, the defendants-appellants may file additional written statement.

8. Both the misc. applications are disposed of.

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