

Devendra Mohan and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-29-2004

Reported in : 2004(3)AWC2162

Judge : B.S. Chauhan and ;Arun Tandon, JJ.

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

Appeal No. : C.M.W.P. No. 3134 of 2004

Appellant : Devendra Mohan and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.L. Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. This writ petition has been filed challenging the order dated 12.11.2003 (Annexure-IV), by which the learned trial court has dismissed the application of the petitioner for amending the written statement.

2. A suit was filed in 1991 by the respondent Nos. 2 to 5 for ejectment and possession in respect of the land in dispute. Petitioners filed the written statement and the trial picked up progress. Present petitioners/defendants filed an application under Order VI Rule 17 of the Code of Civil Procedure on 25.3.2003, which has been rejected vide impugned judgment and order dated 12.11.2003. Hence this petition.

3. According to the petitioners, the application could not have been dismissed for the reason that the application was bona fide and the amendment, if allowed, would facilitate the conclusion of the trial. Delay cannot be the ground for dismissal of the application.

4. However, the learned standing counsel appearing for respondent No. 1 has vehemently opposed it and submitted that the amendment sought to be made was not permissible as the present petitioners miserably failed to explain as to why the pleadings could not have been taken at the earlier stage of filing of the written statement. Thus, petition is liable to be dismissed.

5. The issue involved herein is being considered by the Courts every day. Amendment in the pleadings may generally be allowed and the amendment may also be allowed at a belated stage. However, it should not cause injustice or prejudice to the other side. The amendment sought should be necessary for the purpose of determining the real question in controversy between the parties. Application for amendment may be rejected if the other party cannot be placed in the same position as if the pleadings had been originally correct, but the amendment would cause him injury which could not be compensated in terms of a cost or change the nature of the suit itself as it cannot be permitted to create an entirely new case by amendment. A right accrued in favour of a party by lapse of time cannot be permitted to be taken away by amendment. Amendment can also be allowed at appellate stage. Introduction of an entirely new case, displacing even admission by a party is not permissible. Vide *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors.* : [1957]1SCR595 ; *Nanduri Yogananda Laxminarsimhachari and Ors. v. Agasthe Swarswamivaru* : [1960]2SCR768 ; *Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram and Co.* : [1977]1SCR728 ;

Pandit Ishwardas v. State of M.P., AIR 1979 SC 551 and Mulk Raj Batra v. District Judge, Dehradun : AIR 1982 SC24 .

6. Similar view has been reiterated in G. Nagamma and Anr. v. Siromanamma and Anr. : (1996)2SCC25 and B. K. Narayana Pillai v. Parameshwaran Pillai and Anr., (2000) 1 SCC 772. However, a party cannot be permitted to move an application under Order VI Rule 17 of the Code after the judgment has been reserved. Vide Arjun Singh v. Mohindra Kumar and Co. : [1964]5SCR946 .

7. A Constitution Bench of the Hon'ble Supreme Court in Municipal Corporation of Greater Bombay v. Lala Pancham and Ors. : [1965]1SCR542 , observed that even the Court itself can suggest the amendment to the parties for the reason that main purpose of the Court is to do justice, and therefore, it may invite the attention of the parties to the defects in the pleadings, so that they can be remedied and the real issue between the parties may be tried. However, it should not give rise to entirely a new case.

8. In Jagdish Singh v. Natthu Singh : AIR 1992 SC1604 , the Hon'ble Supreme Court held that the Court may allow to certain extent even the conversion of the nature of the suit, provided it does not give rise to entirely a new cause of action. An amendment sought in a plaint filed for specific performance may be allowed to be done without abandoning the said relief but amendment seeking for damages for breach of contract may be permitted.

9. If the plaintiff wants to add certain facts, which the plaintiff had not chosen to mention in the original plaint and the same had been in his knowledge when the plaint was instituted, the plaintiff cannot be allowed to make fresh allegation of facts by way of amendment at a belated stage. (Vide Gopal Krishnamurthi v. Shreedhara Rao : AIR1950 Mad32 and Court Shankar v. Hindustan Trust Pvt. Ltd. : AIR 1972 SC2091).

10. In Union of India and Ors. v. Surjit Singh Atwal : [1979]2SCR1002 , the Apex Court held that in case of gross delay, application for amendment must be rejected.

11. It is settled legal proposition that if a right accrued in favour of a party, as the order impugned has not been challenged in time, the said right cannot be taken away by seeking amendment in pleadings. (Vide Radhika Devi v. Bajrangi Singh : [1996]1SCR768 and Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy : AIR 2001 SC3685).

12. In G. Nagamma and Ors. v. Siromanamma and Anr. : (1996)2SCC25 , the Hon'ble Apex Court held that in an application under Order VI Rule 17, even an alternative relief can be sought; however, it should not change the cause of action or materially affect the relief claimed earlier.

13. In Vineet Kumar v. Mangal Sain Wadhera : [1984]2SCR333 , the Hon'ble Supreme Court held that normally amendment is not allowed if it changes the cause of action, but where the amendment does not constitute the addition of a new cause of action, or raises a new case, but amounts to not more than adding to the facts already on record, the amendment should be allowed even after the statutory period of limitation.

14. In Fritiz T.M. Clement and Anr. v. Sudhakaran Nadar and Anr.. : AIR 2002 SC1148 , the Hon'ble Supreme Court held that in case the original plaint is cryptic and amendment sought to incorporate about some undisputed facts elaborating plaintiff's claim is based on the said admitted facts, amendment should be allowed as it would place the defendant in a better position to defend and would certainly not prejudice his cause. Moreso, if the claim does not challenge the nature of the relief and rate of fee etc. is challenged without challenging the total amount claimed, such amendment may be allowed even at a belated stage.

15. In Gurdial Singh v. Raj Kumar Aneja : [2002]1SCR817 , the Hon'ble Supreme Court deprecated the practice adopted by the Courts entertaining the application under Order VI Rule 17 of the Code containing very vague and general statements of facts without having necessary details in amendment application enabling the Court to discern whether the amendment involves withdrawal of an admission made earlier or attempts to introduce a time-barred plea or claim or is intended to prevent the opposite party from getting the benefit of a right accrued by lapse of time, as amendment cannot be permitted to achieve the said purposes.

16. Similarly, in *Om Prakash Gupta v. Ranbir B. Goyal* : [2002]1SCR359 , the Hon'ble Supreme Court reiterated the same view extending the scope of Order VI Rule 17 of the Code, observing that amendment should not disturb the relevant rights of the parties those existed on the date of institution of a suit, but subsequent events may be permitted to be taken on record in exceptional circumstances if necessary to decide the controversy in issue, The Court held as under :

'Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter cases, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order VI Rule 17, C.P.C. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In *Trojan and Co. v. R.M. N.N. Nagappa Chettiar* : [1953]4SCR789 , this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be founded; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In *Sri Mahant Govind Rao v. Sita Ram Kesho*, (1988) 25 IA 195 (PC). Their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.'

17. In *Muni Lal v. Oriental Fire and General Insurance Co. Ltd.* : AIR 1996 SC642 , the Hon'ble Apex Court held that the relief of amendment should be granted to 'render substantial justice without causing injustice to the other party or violating fair play and the Court should be entitled to grant proper relief even at the stage of appellate forum.' Similar view has been reiterated in *Jagdish Singh v. Nathu Singh* : AIR 1992 SC1604 .

18. In *Smt Ganga Bai v. Vijay Kumar* : [1974]3SCR882 , the Hon'ble Supreme Court observed as under :

'The power to allow an amendment is undoubtedly wide and may, at any stage, be properly exercised in the interest of justice, the law of limitation notwithstanding, but the exercise of such far-reaching discretionary power is governed by judicial consideration and wider the discretion, greater ought to be the care and circumspection on the part of the Court.'

19. In *Ganesh Trading Co. v. Maoji Ram* : [1978]2SCR614 , the Hon'ble Supreme Court observed that where amendment is found to be necessary for promoting the ends of justice and not for defeating it, the application should be allowed. Similar view had been reiterated in *B. K. N. Pillai v. P. Pillai and Anr.* : AIR 2000 SC614 .

20. In *Estrella Rubber v. Dass Estate Put. Ltd.* : AIR 2001 SC3295 , the Supreme Court held that mere delay in making the amendment application is not enough to reject the application unless a new case is made out, or serious prejudice is shown to have been caused to the other side so as to take away any accrued right.

21. Similarly, In *Siddalingamma and Anr. v. Mamdha Shenoy* : AIR 2001 SC2896 , the Hon'ble Supreme Court held that the Doctrine of Relation Back applies in case of amendment for the reason that the amendment generally governs the pleadings as amended pleadings would be deemed to have been filed originally as such and the evidence has to be read and appreciated in the light of the averments made in the amendment petition. Similar view has been reiterated in *Raghu Thilak D. John v. S. Rayappan and Ors.* : AIR 2001 SC699 .

22. In *Jayanti Roy v. Dass Estate Pvt. Ltd.* : AIR 2002 SC2394 , the Apex Court held that if there is no material inconsistency between the original averments and those proposed by the amendment, application for amendment should be allowed. However, the application should be moved at a proper stage. Application filed at unduly delayed stage should normally be rejected.

23. In *Sampat Kumar v. Ayyakannu and Anr.* : [2002]SUPP2SCR397 , the Hon'ble Supreme Court held that any amendment seeking to introduce a cause of action,

which arose during pendency of the suit, may be permitted in order to avoid multiplicity of suit. But, it should not change the basic structure of the suit. More so, Court should be liberal to allow amendment at the time of pre-trial of a suit but must be strict and examine the issue of delay where the application for amendment is filed at a much belated stage of commencement of the trial.

24. In *Nagappa v. Gurudayal Singh and Ors.* : AIR 2003 SC674 , the Hon'ble Supreme Court held that amendment can be allowed even at an appellate stage in a case where law of limitation is not involved and the facts and circumstances of the particular case so demands, in order to do justice with the parties. The case involved therein had been under the provisions of Sections 166, 168 and 169 of the Motor Vehicles Act, 1988 and as the Act does not provide for any limitation for filing the claim petition, the amendment at appellate stage was allowed.

25. In *Hanuwant Singh Rawat v. Rajputana Automobiles. Ajmer*, (1993) 1 WLC 625, Rajasthan High Court summarised the legal position as under :

(i) That the amendment of pleadings should ordinarily be allowed by the Court, once it is satisfied that the amendment is necessary for the just and proper decision of the controversy between the parties;

(ii) The amendment of the pleadings should not ordinarily be declined only on the ground of delay on the part of the appellant in seeking leave of the Court to amend the pleadings, if the opposite party can suitably be compensated by means of costs etc. Even inconsistent pleas can be allowed to be raised by amendment in the pleadings;

(iii) However, amendment of pleadings cannot be allowed so as to completely alter the nature of the suit;

(iv) Amendment of the pleadings must not be allowed when amendment is not necessary for the purpose of determining the real questions in the controversy between the parties;

(v) The amendment should be refused where the plaintiffs suit would be wholly displaced by the proposed amendment;

(vi) Where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time or by operation of some law;

(vii) The amendment in the pleadings should not be allowed where the Court finds that amendment sought for has not been made in good faith or suffers from lack of bona fides; and

(viii) Ordinarily, the amendment must not be allowed where a party wants to withdraw from the admission made by it in the original pleadings.'

26. In *M/s. Modi Spinning and Weaving Mills Co. Ltd.* (supra), the Hon'ble Supreme Court specifically held that amendment in the pleadings is not permitted if it seeks to 'displace the plaintiff completely from the admissions made by the defendant in the written statement'.

27. In *Heeralal v. Kalyanmal and Ors.*, (1998) 1 SCC 278, the Hon'ble Supreme Court held that once a written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendant cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause some irreparable prejudice.

28. Thus, in view of the above, the law can be summarised that amendments should be allowed if an application is moved at a pre-trial stage, and even at a later stage if the party wants to introduce the facts in respect of the subsequent development as it would be necessary to avoid the multiplicity of the proceedings. The amendment is not permissible if the very basic structure of the plaint is changed or the amendment itself is not bona fide. In case the facts were in the knowledge of the party at the time of presenting the pleadings, unless satisfactory explanation is furnished for not introducing those pleading at the initial stage, the amendment should not be allowed. Amendment should also not be permitted where it withdraws the admission of the party or the amendment sought is not necessary to determine the real controversy involved in the case.

29. The present case requires to be considered in the light of the settled legal propositions. Undoubtedly, matter is pending for about 13 years and trial could not conclude. What petitioners wanted is to amend by adding that the land in dispute had been given to them in partition along with a family tree and the site-plan. But, there has been no explanation as to why all the three things could not be mentioned in the written statement at the time of filing the same. None of them can be held to be a subsequent development nor any explanation had been furnished by the petitioners, as to why the said facts were not in their knowledge at the stage of filing the written statement. It cannot be held in such a case that petitioners were not aware of these things.

30. Thus, in view of the above, we agree with the learned trial court that the application was to delay the conclusion of the trial and would not be a bona fide attempt on their part.

31. We find no force in the petition. It is, accordingly, dismissed.

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