

Sanjay Kumar and Others Vs. District Judge, Gorakhpur and Another

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Court : Allahabad

Decided On : Apr-24-1998

Reported in : 1998(3)AWC1984

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 6, Rule 17;
[Constitution of India](#) - Articles 226 and 227

Appeal No. : C.M.W.P. No. 35603 of 1991

Appellant : Sanjay Kumar and Others

Respondent : District Judge, Gorakhpur and Another

Advocate for Def. : S.C., ;Tarun Verma, ;Rajiv Chandra and ;B.D. Pandey, Adv.

Advocate for Pet/Ap. : R.S. Mishra, Adv.

Judgement :

D.K. Seth, J.

1. In Civil Suit No. 770 of 1989 initiated before the additional court of learned Munsif at Gorakhpur, four of the plaintiffs were shown as minors without being represented by next friend. An application for amendment was filed on 1.12.1989 where two of the said plaintiffs were shown to be aged about 23 years and 21

years respectively, namely, major while the other two minor plaintiffs were shown to be represented by their next friend Sanjay Kumar. Address of the plaintiffs were also sought to be corrected through said amendment application. In the said amendment application, few more prayers were prayed. Learned Munsif by order dated 4.4.91 had allowed the amendment, against which a revision being Civil Revision No. 97 of 1991 was filed by the defendants which was allowed in part. It is this order which is under challenge by means of this writ petition.

2. A preliminary objection was raised as to the maintainability of the writ petition on the ground that the suit being a suit for injunction, writ petition under Article 226 is not maintainable against the revisional order passed by learned District Judge in view of Full Bench decision of this Court in the case of Ganga Saran v. D. M. Hapur. AIR 1991 All 114. Though Mr. R. S. Mishra, learned counsel for the petitioner, disputes the said proposition but by way of abundant precaution, he prayed for leave to amend the cause title so as to convert the application into one under Article 227 of the [Constitution of India](#). Mr. Tarun Verma, learned counsel for the opposite party, opposed the said prayer. Relying on the decision in the case of Arun Lata a. Civil Judge, Bulandshahr, AIR 1998 All 29. Mr. Verma contended that even in this case, Article 227 cannot help the petitioner and at the same time, it is not a fit case where the petitioner should be allowed to convert the application into one under Article 227 of the [Constitution of India](#).

3. In the case of Arun Lata (supra), it has been held that a petition under Article 226 can very well be converted into one under Article 227. It is also one of the aspects that was dealt with in the said case. In that view of the matter, leave is accordingly granted and Mr. Mishra shall effect the amendment in the cause title in course of today.

4. Mr. Verma opposed the prayer of Mr. Mishra with regard to maintainability of the writ petition relying on the decision in the case of Ganga Saran (supra), and contended that a writ petition is not maintainable in view of the said decision since the present suit is for Injunction. As soon the leave to amend the cause title for conversion of the petition into one under Article 227 is granted, the said question loses its significance.

5. On the question of merits of the case. Mr. Mishra contended that though however the amendments were allowed partly, but the part of the amendments which were not allowed, does in no way affect the nature and character of the suit, neither it Introduces a new cause of action. The amendments are mostly minor amendments which were wrongly refused. He relied on a decision in the case of Som Prakash Rastogi v. VIth A.D.J., Moradabad and others, 1997 (3) AWC 1490, to support his contention.

6. Mr. Tarun Verma, learned counsel for the opposite parties, on the other hand, contends that in the present case, description of the property has been changed to include the property of the defendant within the suit property and that some other properties are being added and thereby an attempt has been made to incorporate new properties within the ambit of the suit. By some statements which have been sought to be incorporated, according to Mr. Verma. new cause of action is being introduced. In support of his contention, Mr. Verma relied on the decision in the case of Kisan Co-operative Sugar Factory Limited v. Rajendra Paper Mills. AIR 1984 All 143.

7. Mr. Verma also relied on the decision in the case of Qaiser Sibtain v. District Judge, Allahabad. 1996 (2) ALR 397. In order to contend that findings in the interlocutory matters are only tentative.

8. I have heard Mr. Verma and Mr. Mishra at length. So far as the question of scope of Article 227 vis-a-vis the facts and circumstances of the case, as raised by Mr. Verma, will find answer in the discussion following. The scope of Article 227 as well-established through various decisions of the Apex Court, in my view, may be summarised as hereinafter.

9. The power of Superintendence conferred on the High Court under Article 227 Includes the power of judicial revision even where no appeal or revision lies to the High Court under the ordinary law. It imposes a duty on the High Court to keep the subordinate courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But then, this power is not an unlimited prerogative of the High Court to correct all wrong decisions but is restricted to cases of grave dereliction of duty and flagrant

abuse of fundamental principles of law or Justice where grave Injustice would be done unless the High Court interferes. This power does not clothe the High Court to substitute its own Judgment on question of law or fact in place of that of the subordinate court or to correct an error not being an error of law apparent on the face of the record. Under Article 227. the High Court can interfere in cases of erroneous assumption of excess jurisdiction, refusal to exercise Jurisdiction, error of law apparent on' the face of the record as distinguished from a mistake of law or error of law relating to jurisdiction, violation of principles of natural justice, arbitrary or capricious exercise of authority or discretion, arriving at a finding which is perverse or based on no material, a patent or flagrant error in procedure, order resulting in manifest injustice.

10. The order dated 4.4.1991 passed by the Munsif, as correctly pointed out by Mr. Verma. does not contain any reason to support the order allowing the amendment. But that would not make the said order of amendment vitiated simply because of absence of reasons. So far as the part of the amendments allowed by the Munsif since been affirmed in revision giving proper reasons is concerned, that part need no elaboration. Even if the trial court has not given any reason, this Court may apply its mind to the merits of the case and may enter into the justification of the order on the basis of the materials placed before it. Nothing prevents, while exercising jurisdiction under Article 227. this Court to look into the records. Inasmuch as while exercising revisional jurisdiction, it can decide the same on the basis of the records and not other materials which can be described as evidences which are not part of the records. Even in cases when an order is challenged, the Court has jurisdiction to look into the whole records and may even set aside orders even though not challenged before this Court. Therefore, in the present case while deciding the question, the Court may look into the materials placed before it and if there are reasons as elucidated in the preceding paragraphs, in that event the same can be decided in appropriate manner. Similarly, the revisional court has also not given proper reasons in support of its conclusion refusing other part of the amendment as is apparent from the revisional order. On the same analogy, the said part cannot be set aside only on the ground that it does not disclose proper reasons. However, that part of the order can also be gone into on the basis of the materials placed before this Court.

11. Now on the merits of the amendment which have been placed before this Court by Mr. Misra in detail as well as by Mr. Verma but for respective cross purposes. I have gone through the same. It appears by the amendment sought to be made through paragraph 2 of the said application, the area of the property has been sought to be incorporated which was absent in the earlier description. Thus, it shows that it is mere an elucidation of the description of the property which is already there. Similarly, the amendment sought for by paragraph 3 of the said application, does not materially affect or alter the pleadings so as to term it as altering the nature and character of the suit or introduction of a new cause of action. Similar reason applies in respect of the amendment contained in paragraph 4 of the said application. So far as the amendment sought for by paragraph 5 of the application is concerned, it appears that a better description has been sought to be given in respect of the same property in order to elucidate minute details. Thus, it is also an elucidation of the description of property already given. The same reasoning as has been given in respect of paragraph 3 of the said application, can be assigned in respect of the amendment sought for in paragraph 6 of the application. The reasons as given in respect of paragraph 5, may be assigned in respect of the amendment sought in paragraphs 7 and 8. So far as the amendment sought for in paragraph 9 is concerned. I have compared both the maps and it shows that the map now sought to be substituted is in detail whereas the other one was only a sketch map. Therefore, same reason can be assigned to the amendment sought for in paragraph 9 of the application for amendment.

12. As we have examined, it appears that the amendments if allowed. would neither change the nature and character or complexion of the suit nor it will introduce a new cause of action and it will also not affect the defence materially. Admittedly, no written statement has yet been filed. Therefore, it cannot be said that the plaint is being amended only to counter the defence of the defendant.

13. In the present case, the amendment having been allowed, the same amounts to case decided within the meaning of Section 115. C.P.C. which is the ratio decided in the case of Kisan Co-operative Sugar Factory Limited (supra), therefore, it is open to revision even under Section 115. C.P.C., the scope whereof is circumscribed by the limitation through consistent decisions of the High Courts

and the Apex Court laying down the principles of interference as well as under Article 227 as enunciated earlier.

14. Thus, the question remains as to whether the jurisdiction has been rightly exercised by the Court below. After having scrutinised the facts and materials as detailed above, it appears that the revisional court has failed to exercise its jurisdiction in patent or flagrant error of procedure resulting in manifest injustice, while refusing other part of the amendment. The facts clearly indicate that the revisional court has wrongly exercised its Jurisdiction in refusing a part of the amendment as indicated above. Normally amendments are allowed unless it changes the nature and character of the suit. In the present case, even by incorporation of the amendment the suit remains a suit for injunction. No other relief has been incorporated to change the suit for injunction to any other character. The amendment sought for does not appear to be inconsistent with the pleadings already made. Therefore, though the decision in the case of Som Prakash Rastogi (supra) has been relied on, yet it is not necessary to refer to the same since in that case, it was an alternative case that was sought to be incorporated by the amendment, which was allowed. On the other hand, Mr. Mishra contends that even if amendment to such an extent can be allowed in the said case, then there cannot be any reason to refuse amendment in this case which does not go to such an extent. In my view, this contention appears to bear force and has substance, with which I agree.

15. In the circumstances, the part of the revisional order dated 26th August, 1991 impugned in the present revisional application, is set aside only to the extent by which part of the amendment was disallowed and the order dated 26th August, 1991 stands modified to the extent that rest of the amendment sought for in the said application for amendment, stands allowed and the order dated 4.4.1991 passed by the learned Munsif stands affirmed.

16. Let the amendment as allowed be carried out and the plaint be amended accordingly within a period of one month from the date a copy of this order is communicated to the Court of the learned Munsif.

17. Mr. Tarun Verma submits that there is only but the sole defendant. whom he represents. Therefore, he shall communicate this order to his client, who will file his defence within a period of two months from today.

18. Since the suit is very old one and has remained pending since 1989, it is expected and desirable that it would be decided expeditiously if possible within a period of two years from today.

19. The revision application thus stands allowed. No costs.

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