

Prashant Dave Vs. Smt. Shakuntala Devi

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Court : Chhattisgarh

Decided On : Feb-21-2008

Reported in : 2008(3)MPHT22(CG)

Judge : Sunil Kumar Sinha, J.

Appellant : Prashant Dave

Respondent : Smt. Shakuntala Devi

Disposition : Petition allowed

Judgement :

ORDER

Sunil Kumar Sinha, J.

1. Heard.

2. The petitioner/plaintiff has filed this writ petition under Article 227 of Constitution of India, challenging the validity of the order dated 24-9-2007 (Annexure P-5) passed by the 4th Civil Judge, Class II, Raipur, in Civil Suit No. 123-A/2006, whereby the said Court has dismissed his application filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908.

3. The brief facts are that the petitioner/plaintiff, claiming himself to be a tenant, filed a suit for permanent injunction praying that the defendant/respondent be

restrained from interfering with his possession over the suit shop and she may also be restrained from illegally evicting him from the said shop.

4. Earlier, the petitioner has also claimed for temporary injunction, but his claim for temporary injunction was dismissed by the Trial Court. Thereafter, the Miscellaneous Appeal was dismissed by the Appellate Court and ultimately, the writ petition filed under Article 227 of the Constitution of India was also dismissed by this Court. It is after such dismissals, the said application for amendment of the plaint was filed, in which, the plaintiff sought for incorporating the plea regarding dispossession as also claiming relief of possession against the defendant. The said application was contested by the defendant on the ground that the relief sought for by way of amendment was barred by time and since a contradictory plea was being taken by the plaintiff, it should not be allowed.

The Trial Court by the impugned order dismissed the application mainly on the ground that the relief claimed by the plaintiff was barred by limitation and for coming to that conclusion, it has entered into the controversy raised by the parties regarding the date of dispossession of the plaintiff as also regarding the applicability of provisions of Article 64 of the Indian Limitation Act and it also referred to the provisions of Section 6 of the Specific Relief Act and concluded that in fact, the relief claimed was barred under Section 6 of the Specific Relief Act.

5. Learned Counsel for the petitioner submits that the Trial Court erred in law by entering into the controversy regarding merits of the amendment sought for on the ground of its maintainability on account of limitation. He submits that it was not the proper stage for the Trial Court to enter into a mixed question of fact and law and the Trial Court ought to have allowed the amendment application and thereafter, if the grounds are taken in the written statement, then, it would have decided the question of limitation by framing issues and calling upon the parties to lead their evidence and argue on the point.

6. On the other hand, learned Counsel for the respondent supports the order passed by the Trial Court.

7. I have heard learned Counsel for the parties at length and have also perused the records of the writ petition.
8. The Apex Court referring to the judgments rendered in the matters of Charan Das v. Amir Khan AIR 1921 PC 50, L.J. Leach & Co. Ltd. v. Jardine Skinner & Co. : [1957]1SCR438 , Ganga Bai v. Vijay Kumar : [1974]3SCR882 and Ganesh Trading Co. v. Moji Ram : [1978]2SCR614 , held in the matter of B.K. Narayana Pillai v. Parameswaran Pillai : AIR 2000 SC614 , that 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.
9. 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 the Supreme 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.
10. Further in the matter of Raghu Thilak D. John v. S. Rayappan and Ors. (2001) 2 SCC 472, where the amendment sought was claimed to be barred by limitation, the Apex Court held that the dominant purpose of allowing the amendment is to minimize the litigation and when the plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case and the plea of limitation being disputed, it could be made a subject matter of the issue after allowing the amendment prayed for, and on this ground, it directed that the amendment be allowed and the disputed matter should be made the subject matter of an issue.
11. If we apply the above principles in the facts and circumstances of this case, it would appear that previously the plaintiff had filed a suit for permanent injunction and when he lost in the matter of temporary injunction even in the High Court, he

filed an application for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure mainly for incorporation of the relief of possession. The pleadings raised by the plaintiff for amendment and the resistance made by the defendant in this regard make it clear that the point to be decided with reference to them was a mixed question of fact and law and the Trial Court apparently erred in law while entering into decide the point at the stage of deciding the amendment application, whereas, in all propriety, the point raised should have been allowed to be incorporated in the plaint and then, a finding would have been recorded after framing an issue on the point.

12. In the above facts and circumstances of this case, in the opinion of this Court, on the said grounds, the petition filed by the petitioner/plaintiff deserves to be allowed and the impugned order passed by the Trial Court deserves to be set aside.

13. Accordingly, the impugned order dated 24-9-2007 passed by the Trial Court is set aside. The amendment application filed by the plaintiff stands allowed.

14. Needless to say that the defendant shall be at liberty to file written statement in relation to the pleas raised by the plaintiff including the plea of limitation and the question of limitation shall be open for decision by the Trial Court during the course of trial in accordance with law.

No order as to costs.

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