

Vijay Kumar @ Vijay Singh Vs. Dariya Singh

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Court : Punjab and Haryana

Decided On : Aug-21-2003

Reported in : (2004)136PLR714

Judge : M.M. Kumar, J.

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

Appeal No. : Civil Revision No. 3230 of 2003

Appellant : Vijay Kumar @ Vijay Singh

Respondent : Dariya Singh

Advocate for Def. : Vimal Mann, Adv.

Advocate for Pet/Ap. : R.A. Sheoran, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This petition filed under Article 227 of the Constitution of India challenges order dated 19.5.2003 passed by the Addl. Civil Judge (Sr. Division), Loharu allowing the application of the plaintiff-respondent filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for brevity 'the Code') seeking

amendment of the plaint. By way of amendment the plaintiff respondent has sought to incorporate the challenge to the adoption deed dated 1.6.1985 executed by one Puran adopting defendant-petitioner. The principal ground for allowing the amendment under Order 6 Rule 17 of the Code is that the adoption deed has been pleaded in the written statement and was not in the knowledge of the plaintiff-respondent earlier.

2. Brief facts which have led to the filing of the instant petition are that the plaintiff-respondent filed a suit for declaration to the effect that he is owner in possession of the suit property which originally belonged to one Puran son of Jai Krishan being the son of pre-deceased brother of Puran. The judgment and decree dated 30.8.1991 rendered in Civil Suit No. 596 of 1991 titled Vijay Kumar @ Vijay Singh v. Puran has also been challenged. The defendant-petitioner filed written statement on 5.9.2001 pleading that he was adopted son of Puran vide registered adoption deed dated 1.6.1985 and the decree dated 30.8.1991. In consequence of the adoption deed and a decree a mutation has been entered on 8.1.1992 in favour of the defendant-petitioner. On 6.4.2002, the plaintiff-respondent filed an application under Order 6 Rule 17 of the Code seeking amendment of the plaint by incorporating the challenge to the adoption deed dated 1.6.1985. The trial Court allowed the application and the operative part of the order reads as under :-

'Order 6 Rule 17 of the Code of Civil Procedure says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties provided that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial. In the present case, the applicant has specifically pleaded that respondent was never adopted by Puran son of Jai Kishan. The applicant has challenged the judgment and decree dated 30.8.1991 suffered by Puran in favour of respondent in civil suit No. 596 of 1991. It has not been mentioned in the said decree that respondent has been adopted vide registered adoption deed dated 1.6.1985. The applicant was thus not in the

knowledge that respondent has been adopted vide alleged adoption deed dated 1.6.1985. The applicant could not have raised the matter earlier as he was not in the knowledge of existence of any such adoption deed dated 1.6.1985. No prejudice is going to be caused to the respondent in case the present application is allowed. The case of the applicant is that respondent was ever adopted by Puran. The adoption deed in question is very much material for the purpose of determining the real controversy involved in the present suit between the parties. The amendment sought is in consonance with the original cause of action. The respondent could well be compensated with costs. Accordingly, the prurient application is allowed subject to payment of Rs. 400/- as costs.....'

3. Shri R.A. Sheoran, learned counsel for the defendant-petitioner has argued that plaintiff-respondent was fully aware of the adoption of the defendant-petitioner by Puran. He was also fully aware about the existence of the adoption deed. Learned counsel has further pointed out that the adoption deed is dated 1.6.1985 and the trial Court by allowing the amendment has permitted the time barred claim to be incorporated in the plaint. In support of his submission the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Radhika Devi v. Bajrangi Singh and Ors., 1 A.I.R. 1996 S.C. 2358.

4. Learned counsel for the plaintiff-respondent has pointed out that application was filed by him on 6.4.2002 and the same has been decided by impugned order. According to the learned counsel, there is no delay because the adoption deed dated 1.6.1985 came to the knowledge of the plaintiff-respondent only on the filing of the written statement on 5.9.2001. Learned counsel has further contended that the amendment sought by the plaintiff-respondent as alleged by the Civil Judge is within the four corners of Order 6 Rule 17 of the Code and, therefore, no interference under Article 227 of the Constitution is called for.

5. I have thoughtfully considered the respective submissions made by the learned counsel for the parties and have also perused the impugned order. A perusal of Order 6 Rule 17 of the Code, as amended, would show that the amendment is not to be allowed unless the Court comes to the conclusion that with due diligence the party seeking amendment could not have known the facts sought to be

incorporated by way of amendment. Order 6 Rule 17 of the Code, as amended, reads as under:

'Order VI. xx xx xx xx

Rule 17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.'

6. The Civil Judge in the instant case has recorded a categorical finding that plaintiff-respondent came to know about the adoption deed dated 1.6.1985 after the filing of written statement which was filed on 5.9.2001. The application for amendment has been filed on 6.4.2002. The amendment has been rightly allowed by the trial Court as the same is within the four corners of Order 6, Rule 17 of the Code.

7. The argument of the learned counsel based on the judgments of the Supreme Court in the case of Radhika Devi (supra) cannot be considered at this stage because the question of limitation is a mixed question of law and facts. There are no findings on record to conclude that the suit of the plaintiff after amendment would be time barred in so far as challenge to the adoption deed dated 1.6.1985 is concerned. If the plaintiff-respondent is able to prove the date of knowledge from the date of filing of the written statement then it would be entirely a different matter. Therefore, this question is to be gone into by the Civil Judge during the trial. If the defendant-petitioner is keen to raise an objection of limitation, he is at liberty to do so before the Civil Judge. However, this argument cannot be entertained at this stage. Moreover, the judgment of the Supreme Court in Radhika Devi's case (supra) reveals a different version because in that case the

fact of registered gift deed dated 28.7.1978 was disclosed in the written statement filed by the defendants on 15.6.1998. The application seeking amendment was filed on 11.11.1992 wherein the gift deed was sought to be challenged. The amendment was allowed by the Courts below and the Supreme Court held that such an amendment could not have been allowed after the expiry of three years of the filing of the written statement as the defendant had come to know about the existence of the first deed. Placing reliance on an earlier judgment of the Supreme Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala*, A.I.R. 1964 S.C. 11, their Lordships observed as under:

'In that case this Court considered the cross objections to be treated as a cross suit since no alteration was being made in the written statement to treat it as a plaint originally instituted. The amendment which was sought to be made was treated to be clarificatory and therefore, this Court had upheld the amendment of the written statement and treated it to be a cross suit. The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleadings, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to every one. Even after filing of the written statement for three years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.'

8. In view of the above, I have no hesitation in rejecting the argument raised by the counsel for the defendant-petitioner.

9. For the reasons recorded above, this petition fails and the same is dismissed.

However, it would be open to the defendant-petitioner to raise all permissible objections against the adoption deed dated 1.6.1985. Defendant-petitioner would not be bound by the finding that the adoption deed came to be knowledge of the plaintiff-respondent on the filing of the written statement on 5.9.2001.

