

Narinder Kumar Vs. Parvati Devi

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Court : Delhi

Decided On : Apr-18-1980

Reported in : 1981RLR168

Judge : S.B. Wad, J.

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

Appeal No. : Civil R. Appeal No. 253 of 1979

Appellant : Narinder Kumar

Respondent : Parvati Devi

Advocate for Pet/Ap. : R.K. Makhija,; V.K. Makhija and; G.N. Aggarwal, Advs

Judgement :

S.B. Wad, J.

(1) This revision is against the order of SubJudge, first class rejecting application for amendment of the written statement, under order 6 Rule 17 of the Code of Civil Procedure. The learned Judge found that the proposed amendment contradicted the earlier stand taken by the defendants He further held that the proposed amendment was not bona fide, the motive being to delay the matter.

(2) THE_LAW in regard to amendment of a written statement is now well settled. The main consideration for the Court under Order 6 Rule 17 is to examine whether the proposed amendment is just or not and whether it is necessary for the proper and effective decision of the case. Delay in filing such an application by itself is of no consequence. The discretion in allowing an amendment has to be weighed in the context of all circumstances, such as pleadings of the parties, the likely effect of the proposed amendment and the prejudice that the plaintiff may suffer.

(3) The suit premises namely, the shop, was originally let out to one Bhawani Dass and one Fateh Chand. Bhawani Dass died in 1963. The present respondent purchased the suit house in 1969. The tenancy of Fateh Chand was terminated in September, 1970 by a notice. In reply to the said notice late Fateh Chand asserted that the tenancy of the shop (for commercial purpose) was granted in the name of the firm Fateh Chand Bhawani Dass run by Hindu Undivided Family, (H.U.F.) since the time of Bhawani Dass. Even at the time of notice business was being carried out by the firm on behalf of the H.U.F. in the said premises. Fateh Chand denied that there was any subletting in favor of his sons as alleged in the notice. The landlord made an application thereafter for seeking permission of the Slum Clearance Authorities. Those proceedings went on up to 1974. In December, 1974, Fateh Chand died. The present suit was filed on 26-5-75 alleging that the defendants (who are the sons and widow of Fateh Chand) are occupying the suit premises without the consent, authority and permission of the plaintiff and they had no right, title or interest, whatsoever, in the suit premises. It was further alleged that the defendants had not inherited any right from Shri Fateh Chand and that their possession of the premises was in the nature of trespass. In reply to the said averments in the plaint, the defendants reiterated their stand mentioned in reply to notice of termination of tenancy. It was explained in detail that Fateh Chand and Bhawani Dass, formed Joint Hindu Family and H.F.F. was running the firm Fateh Chand Bhawani Dass. -After the death of Bhawani Dass as well as Fateh Chand, the H.U.F. the business in the suit continued to run premises. It was denied that Fateh Chand alone became the tenant in respect of the shop after the death of Bhawani Dass. It was then asserted that the tenancy rights in the suit shop were secured by the present defendants according to Hindu Law.

(4) The proposed amendment was being and the defendants want the following sentence to be added in para 3 Of-the Written statement. 'Even otherwise S/Shri Fateh Chand and Bhawani Dass were co-tenants of the premises

(5) Admittedly this amendment has been moved after the evidence of the parties was dosed. The learned counsel for the plaintiff, strongly submits that the defendants have admitted before the Slum Clearance Authorities and in the written statement in the present suit that Bhawani Dass and Fateh Chand were joint tenants. It is no doubt that the words 'joint tenants' do occur in the written statement as well as the proceedings before the Slum Clearance Authorities. However, the plaint and the written statement must be read as a whole to find out the real controversy between the parties. The real case of the plaintiff was (i) Fateh Chand alone was a tenant after the death of Bhawani Dass, (ii) the tenancy being statutory commercial tenancy it could not be inherited By the heirs of Fateh Chand 1981. Rajdhani Law Reporter. 172 and (iii) the defendants were rank trespassers. The case of the defendants, on the other hand, was that the premises were taken for running a H.U.F. shop and that all the members of the joint family had an Interest in the tenancy. parties I plaintiff would not be burdened with new hardship. 9. I, thereforee, hold that in the interest of justinc thp prosed amendment is justi in the tenancy. With these pleadings of the , fied the impugned order passed by the parties I cannot attach more importance to the 'Sub-Judge. 1st class, Delhi on 7- 2-1979 is words 'joint tenant' used by the defendants a side and the amendment is allowed. No in the written statement. order as to costs.

(6) The proper nomenclature for the joint holding of the property by the members of a Hindu-Joint Family, had been a matter of 'great confusion and required a decision of privy council. It was clarified by the Privy that 'normal concept 6f joint tenancy in ErfGLISH'law is riot applicable to joint holding by the members of a Hindu Joint Family. Hindu Succession Act 1995 has now into- duced the concept to f co-tenancy as females also take a share in Hindu Joint Family Property

(7) The proposed fore, in amendment law. is, thereed the proposed identify the fore, in Keeping amendmentl makes with an effort to correct legal category to describe the factual legal relationship. All the necessary factual I averments are

already present in the written statement. There is no element of surprise to plaintiff nor any fresh evidence is necessary. The fact that the amendment is moved three years after the filing of the suit does not render it non-bona fide.

(8) I do not think that the character of the written statement would undergo a fundamental change if the amendment is allowed. The amendment would not create a serious disadvantage to the plaintiff. The plaintiff's fear that if the defendants are treated as co-tenants, the notice of termination of tenancy would be rendered illegal, at this late stage of the suit, is based on misapprehension. What the plaintiff would ultimately be required to prove is that none of the members of the Joint Family was entitled to the tenancy rights. He must also establish that Fateh Chand was also a tenant in his personal capacity after the death of Bhawani Dass, and the defendants were trespassers. By correctly identifying the legal name for the factual relationship, the

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