

Gobinder Singh Vs. Pritam Singh (Wg. Cdr.) and ors.

Gobinder Singh Vs. Pritam Singh (Wg. Cdr.) and ors.

SooperKanoon Citation : sooperkanoon.com/699402

Court : Delhi

Decided On : May-20-1999

Reported in : 1999IVAD(Delhi)960; 79(1999)DLT711; 1999(50)DRJ177

Judge : Dr. M.K. Sharma, J.

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

Appeal No. : I.A. No. 2685 of 1995 In Suit No. 148 of 1981

Appellant : Gobinder Singh

Respondent : Pritam Singh (Wg. Cdr.) and ors.

Advocate for Def. : Mr. L.R. Gupta, Sr. Advocate, ; Mr. Mahinder Rana and ; Mr.

Advocate for Pet/Ap. : Mr. Arun Mohan, Sr. Adv.,; Mr. Sanjeev Khanna and; Ms. Vais

Judgement :

Dr. M.K. Sharma, J.

1. By this order, I propose to dispose of the application registered as I.A. No. 2685/1995 filed by the plaintiff praying for striking out the averments made in the written statement, which is in the nature of complete departure from the original statements.

2. The plaintiff filed the present suit seeking for a decree for partition and declaration. The aforesaid suit was contested by the defendant No. 4 now arrayed as defendant No.3 by filing a written statement on 18.3.1982 to which a replication was also filed. On the basis of the pleadings of the parties, issues were framed in the suit on 22.11.1985 and additional issues were also framed on 30.1.1986. Under the aforesaid order dated 30.1.1986 the plaintiff was directed to file an amended plaint and also to make up the deficiency of the Court fee. The said order records the undertaking of the learned Counsel of the plaintiff to amend the plaint and seek the relief of possession and pay ad valorem Court fee.

3. Pursuant to the aforesaid order, the plaintiff filed an amended plaint on 25th February, 1986. A copy of the said amended plaint is placed on record. It is stated that the aforesaid amended plaint was only formal and pursuant to the order for amendment of the plaint for seeking the relief of possession and paying the ad valorem Court fee. thereforee, the written statement to the amended plaint could be filed by defendant No. 3 only in respect to the amended portions in the plaint, retaining the averments made in the earlier written statement as it is. It is stated by the plaintiff that instead of filing a written statement to the amended plaint, defendant No. 4, who was subsequently made defendant No. 3, filed a written statement going beyond the permissible limit and adding thereto a number of fresh averments and even going to the extent of withdrawing the admission made in the written statement. It is stated that no amendment of the written statement was sought for by the said defendant and in absence thereof the said defendant could not be permitted to file a written statement going beyond the amended portion and withdrawing the admission. Hence, the present application.

4. The aforesaid application is contested by defendant No. 3 contending, inter alia, that the amended written statement was filed on 19.3.1986 as against which a replication was also filed countering the statements made in the written statement. At that stage, the plaintiff did not take any objection as against the aforesaid insertion of fresh and new statements in the written statement. It is also stated that on the pleadings of the parties, even additional issues were framed by this Court and, thereforee, in view of absence of any objection on behalf of the plaintiff in that regard, the written statement filed by defendant No. 3 to the amended plaint

deemed to have been accepted and that also amounted to the Court accepting and allowing the amendment.

5. Mr. Arun Mohan, Counsel for the plaintiff, however, submitted that defendant No. 3 could not have filed a written statement incorporating therein a fresh and new case than what was pleaded in the original written statement without obtaining permission from the Court for such amendment. Further submission of the Counsel appearing for the plaintiff that the amendment in the plaint was only formal in nature and to that extent only written statement could have been amended and under the garb of the same, defendant No. 3 could not have introduced a new case by taking out admissions made in the original written statement. In support of his contention, the learned Counsel relied upon the Full Bench decision of this Court in Kedar Nath & Ors. Vs . Ram Parkash & Ors., reported in : 1998VIIAD(Delhi)409 . Learned Counsel also relied upon the decision in Heeralal Vs . Kalyan Mal and Others : AIR 1998 SC618 .

6. Mr. L.R. Gupta, learned Counsel appearing for defendant No.3 however, submitted that subsequent to the filing of the amended written statement, replication was filed on 18.9.1987. It was submitted in the said replication that no objection was taken by the plaintiff for inserting fresh statements. He also submitted that on the basis of such pleadings, additional issues were also framed by the Court on 13.1.1998 on the basis of such new pleadings. Learned Counsel for defendant No.3 submitted that the aforesaid conduct on the part of the plaintiff in not taking any objection to the pleadings in the written statement and framing of additional issues on the basis of such pleadings amounted to allowing the amendment in the written statement by the Court. He also submitted that the evidence adduced by the plaintiff by way of affidavit goes beyond the pleadings and as such the plaintiff has waived all his rights to raise an objection in respect of the pleadings in the amended written statement.

7. In the light of the aforesaid submission of the learned Counsel appearing for the parties, the issue that arises for my consideration is whether any amendment has been made in the written statement beyond the permission granted by this Court and if so, whether subsequent actions on the part of the plaintiff in not objecting to

the additional pleadings in the written statement and the framing of additional issues on the basis of such new pleadings amounted to deemed and implied permission for amendment of the written statement. Another issue that could also arise for consideration is whether the admission made by one of the parties could be taken up off from the record.

8. The plaintiff has placed on record the original plaint, copy of the amended plaint, copy of the original written statement and the written statement filed against the amended plaint. On consideration of the amended plaint filed by the plaintiff, I find that the plaintiff has incorporated in the amended plaint a further relief of decree for possession to the plaintiff and in respect of valuation of the suit. In paragraph 17, the following sentence is added:

'Value of the suit property for the relief of possession is Rs. 3,50,000/-, which is the value of the plaintiff's one-half share in the property on which Court fee of Rs. 5,760/- is paid.'

9. At the time of filing of the suit, total Court fee of Rs. 39/- was paid and, therefore, the said figure of Rs. 39/- is struck off and in its place Rs. 5,799/- is added. Similarly, in the relief portion the plaintiff has added a relief for decree for separate possession to the plaintiff. Save and except the aforesaid amendments, the rest of the amendments are only formal and are necessary in view of death of defendant No.3 and consequent to striking off the name. A written statement came to be filed by defendant No. 4, Smt. Rama Saxena, who in view of striking off the name of erstwhile defendant No. 4, became defendant No.3 in the present suit. On perusal of the said written statement, I find that a number of changes have been brought in by the said defendant in the written statement filed as against the amended plaint from that of the original written statement. The said written statement to the amended plaint incorporates certain statements which are additional and new statements.

10. The said defendant is entitled to seek for amendment of the written statement by filing an appropriate application and if and when the Court permits such amendments to be incorporated in the written statement, then only such averments could be incorporated in the written statement. In absence of such

specific permission by the Court, in my considered opinion, further averments beyond such limits could not be inserted in the written statement filed to the amended plaint. In this connection, reference may be made to the Full Bench decision of the Court in Kedar Nath & Others v. Ram Parkash & Others, (supra). In the said decision the Full Bench has laid down the following principles and procedural steps deducible from English and Indian practice for regulating the procedure for amendment:

'(i) merely because an amendment has been allowed in the plaint, the defendant does not get a right and certainly not an unbridled right to file a new written statement;

(ii) any additional pleading cannot be at variance or inconsistent with the original pleading;

(iii) a pleading inconsistent with or in departure from an original pleading can be allowed only by way of amendment subject to the leave being granted by the Court under Order 6, Rule 17, CPC;

(iv) Order 6, Rule 17, CPC applies to amendment in the plaint and the written statement - both. It applies to amendment sought for by one party and also to consequential amendments in the pleadings sought for by the opposite party. Any amendment whether original or consequential, shall be only by the leave of the Court.'

To the fact and circumstances of the present case, the ratio of the aforesaid decision fully and squarely applies and following the said Full Bench decision of this Court it is held that merely because an amendment has been allowed in the plaint, the defendant No.3 does not get a right and certainly not an unbridled right to file a new written statement and that the additional pleading could not be at variance or inconsistent with the original pleading. In my considered opinion, defendant No. 3 could have amended the written statement by way of consequential amendment only and if he or she sought to amend the written statement going beyond the consequential amendment made in the plaint, he or she was required to obtain leave of the Court for doing so.

11. In Heeralal (supra), the Supreme Court has held that when the amendment sought in the written was of such a nature as to displace the plaintiff's case, it could not be allowed as ruled by a three-Member Bench of the Supreme Court.

12. The defendant No. 3, did not follow the aforesaid principle of law and instead of seeking for amendment of the written statement sought to incorporate further and additional statements in the written statement which were never permitted to be done by orders of the Court. So long such orders are not passed by the Court allowing amendment in the written statement, no additional and new averment could be added and made in the written statement by defendant No. 3. What is sought to be done by defendant No.3 in the present suit by filing an amended written statement incorporating further and additional statements in the written statement is not permissible to be done unless and until there is specific order from the Court permitting such amendments.

13. The next question that arises for my consideration is whether the action of the plaintiff not objecting to the aforesaid action on the part of the said defendant in filing a written statement incorporating further any additional statements in the written statement could amount to waiver and/or acquiescence. It was submitted that the plaintiff submitted his replication giving counter to the additional/further statements made in the written statement on the basis of which the Court has framed additional issues. In my considered opinion, what is not permissible to be done in law is always without jurisdiction and there could be no waiver against jurisdiction. Even action on the part of the Court proceeding to frame additional issues on the basis of said pleadings was, in my considered opinion, nonest and, therefore, it is held that subsequent action on the part of the plaintiff in not objecting to the additional and further statements being taken in the written statement by defendant No. 3 could not have amounted to allowing the amendments in favor of said defendant No. 3 For without there being any request for amendment and specific orders of Court, no such order could be presumed and/or implied.

14. In my considered opinion, the amended written statement as filed by defendant No. 3 is not in accordance with the law and is without jurisdiction and, therefore,

the same is directed to be taken out of record and defendant No. 3 is directed to place on record written statement to the amended plaint by incorporating therein the amendments consequent upon and restricted only to the new averments made in the plaint so far relief of possession and payment of ad valorem Court fee are concerned. No statements shall be included in the said written statement beyond the aforesaid ambit and if the said defendant No. 3 seeks to get his or her written statement amended, she shall be at liberty to approach this Court in accordance with law seeking for amendment of the written statement under Order 6, Rule 17, CPC. In the event of such an application being filed by the said defendant No.3, the same shall be considered in accordance with law at an appropriate stage.

15. Additional statements going beyond the permissible limit is taken off the record and defendant No. 3 is directed to file a fresh written statement incorporating only the relevant amendments in view of filing of the amended plaint. In terms of the aforesaid order, the present application stands disposed of.

16. Let the suit be re-notified on 6.9.1999 for further orders.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com