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Court : Rajasthan

Decided On : Oct-28-1991

Reported in : AIR1992Raj136; 1992(1)WLC476; 1991WLN(UC)253

Judge : R.S. Kejriwal, J.

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

Appeal No. : Civil Revn. No. 81 of 1991

Appellant : Badri Narayan and anr.

Respondent : Ram Gopal and anr.

Advocate for Def. : Rajendra Prasad, Adv.

Advocate for Pet/Ap. : M.M. Tiwari, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.S. Kejriwal, J.

1. This revision has been directed against the order dated 11-1-1991, passed by M.J.M. Srimadhapur, by which the said court allowed the application for amendment of plaint submitted on 8-8-1990 by the plaintiff non-petitioner No. 1.

2. The brief relevant facts of this revision are that the plaintiff non-petitioner No. 1, filed a suit for permanent injunction against Jhuntha deceased, brother of the petitioners and the non-petitioner No. 2 with the allegations that the chowk outside the house of the defendants belongs jointly to the plaintiff and the defendants and that the defendants had already dug the foundation and wanted to raise a wall. This suit was filed in the year 1974. On 8-8-1990, at the stage of arguments, the plaintiff moved an application for amendment of plaint with the allegations that after two or three days till the order of status quo was passed by the trial court on 11-2-1974, the defendants constructed a wall measuring 15' x 4.5' at a distance of 20'; that these facts have already come on record but no relief was claimed in the plaint for demolition of the said wall and as such amendment be allowed for demolition of the said wall. This application of the plaintiff was opposed by the petitioners who alleged that the amendment has been sought at the stage of arguments after a period of more than 16 years; that the defendants have become owner of the disputed property on account of adverse possession after a period of 12 years and as such no amendment can be allowed after limitation.

3. Learned M.J.M. Srimadhopur, on 11-1-91, allowed the application for amendment. This order has been challenged in this revision by the defendant-petitioners.

4. I have heard learned counsel for the parties. It has been argued by Dr. Tiwari, counsel for the petitioners that the learned Munsif did not consider this argument of the petitioners that no amendment can be allowed after the period of limitation. He argued that according to the plaintiff himself the constructions were raised between 6-4-1974 to 11-4-1974, and the application for amendment was moved on 8-8-1990, after a period of more than 16 years and at the stage of arguments. He further argued that the petitioners have acquired title over the disputed land on account of adverse possession and at this stage, amendment cannot be allowed. He argued that on account of amendment being allowed, the petitioners have been seriously prejudiced. He further argued that it is a settled law that if a party is going to be seriously prejudiced on account of amendment in the pleading, the pleading should not be amended. In support of his contentions, Dr. Tiwari placed reliance on the judgments reported in Smt. Mohini Devi v. The Masjid Committee,

Ajmer (1989) 2 Rajasthan LR 287; Ashwani Kumar v. Banwari Lal, (1989) 1 Rajasthan LR 396 : (AIR 1990 Raj 3); Laxmidas v. Nanabhai, AIR 1964 SC 11 and Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, AIR 1969 SC 1267.

5. On the other hand Mr. Rajendra Prasad, counsel for the plaintiff non-petitioner No. 1 argued that there is no jurisdictional error and as such the revision is not maintainable. In support of his arguments, he placed reliance on Artabandhu Mohapatra v. Bisweswar Bhutia reported in AIR 1979 Orissa 110. He further argued that it is a settled law that amendments should liberally be allowed. In this connection, he placed reliance on Chandan Lal v. Keshav Dev, reported in 1986 Rajasthan LR 716. He further argued that evidence is already on record and he wants only amendment in the relief clause and as such the defendant non-petitioner cannot be prejudiced.

6. In Ashwani Kumar's case (AIR 1990 Raj 3) (supra), the trial court allowed the amendment application. The order was challenged in revision. This High Court after placing reliance on Laxmi Das's case (AIR 1964 SC 11) (supra) and Kishandas Roop Chand v. Rachappa Vithaba (1909) ILR 33 Bom 644, allowed the revision application on the ground that after the limitation period is over, amendment cannot be allowed which causes injustice to the other side. In Kishandas Roop Chand's case (supra) Batchelor J. enunciated the following principles which apply to the cases of amendment:--

'All amendments ought to be allowed which satisfy the condition : --

(a) of not working injustice on the other side, and

(b) of being necessary for the purpose of determining the real questions in controversy between the parties.... But I refrain from citing further authorities, as, in my opinion, they all laid down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where

a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause defendant an injury which could not be compensated in costs by depriving him of good defence to the claim. The ultimate test therefore, still remains the same can the amendment be allowed without injustice to the other side or can it not?'

7. In Ashwani Kumar's case (AIR 1990 Raj 3) (supra) the facts were that the suit was filed in the year 1977 and the application was filed at the time of arguments in the year 1987. The application for amendment was rejected only on the ground that it was filed at a very belated stage of more than nine years.

8. In Laxmi Das's case (AIR 1964 SC11)(supra), it has been held by the Apex Court as under (at p. 18 of AIR):--

'It is no doubt true that save in exceptional cases, leave to amend under Order 6, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this Rule can apply where either fresh allegations are added or fresh reliefs are sought by way of amendment. Where for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, the question of bar of limitation is not one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading.'

9. In Jai Jai Ram's case (AIR 1969 SC 1267) (supra), the Hon. Supreme Court held that the Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

10. From all these rulings, it is apparent that the amendments in pleadings can be allowed if no injustice is caused to the either side. In the present case the

amendment has been allowed after a period of 16 years when the case was fixed at the stage of arguments. Under these circumstances, the petitioners are likely to be seriously prejudiced in case the amendment is allowed at the stage of arguments and after a period of 16 years. Whether the amendment is barred by limitation or not, I do not want to express any opinion at this stage because in case any opinion is expressed, the parties may be seriously prejudiced in case any other suit is filed by the plaintiff for mandatory injunction demolishing the constructions raised by the defendants. The rulings cited by the counsel for the plaintiff non-petitioner are not applicable to the facts of the present case, though it is true that a Court should be liberal in allowing amendment but in the present case the facts are that the amendment for mandatory injunction was sought at the stage of arguments and after more than 16 years from the date of constructions. This aspect of the case was not taken into consideration by the learned Munsif while allowing the amendment. In my opinion, the application for amendment was allowed in arbitrary way. The learned Munsif has acted in the exercise of his jurisdiction illegally and with material irregularity in allowing the amendment application and in case the order passed by the learned Munsif is allowed to stand, it would seriously affect the rights of the defendant petitioner.

11. Consequently, I allow the revision, set aside the order dated 11-1-1991, and dismiss the application for amendment with costs of Rs.200/-.