

Smt. Sita Devi and Others Vs. Nitln Gupta and Another

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Court : Rajasthan

Decided On : Oct-20-2000

Reported in : 2001(1)WLN705

Judge : J.C. Verma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 6, Rule 17

Appeal No. : S.B. Civil Revision Petition No. 256 of 2000

Appellant : Smt. Sita Devi and Others

Respondent : Nitln Gupta and Another

Advocate for Def. : L.L. Gupta, Adv.

Advocate for Pet/Ap. : J.P. Goyal, Adv.

Judgement :

ORDER

Verma, J.

1. The present revision petition has been preferred against the order dated 19.2.2000 in the civil suit No. 45/99 passed by Additional District Judge No. 1, Jaipur City, Jaipur whereby the application of plaintiff for amendment in plaint filed under Order 6 Rule 17 CPC has been dismissed mainly on the ground that the

amendment will amount to inconsistent plea, nor it would be relevant for the purpose of deciding the controversy in suit and that the amendment will change the nature of the suit.

(2). Counsel for petitioner submits that in the facts mentioned in the plaint in regard to dispute about the property neither it changes the nature of the suit, nor it is inconsistent with the pleading or at the most even the amendment is allowed it will amount to alternative plea.

(3). The facts of the case, as stated in the order, are that the suit was filed by plaintiff for cancellation of sale deed dated 1.5.98 and to deliver the possession of the property in dispute. The suit was filed for declaration as well as permanent injunction. The parties are in blood relation. In the suit it was stated that the plot No. 56 was allotted to late Kalyan Sahai s/o Pratap ji by Ramnagar Housing Society and Kalyan Sahai had constructed the building on the said plot from his own expenses. The dimensions have been given in the suit. Kalyan Sahai had died on 19.4.83. It was stated that the defendant No.2 namely Kailash Kumar Sharma s/o Kalyan Sahai without consent and permission of other share holders had sold the house without getting the property partitioned and that he had no right to sell the plot and building in question. Therefore prayed that the sale-deed dated 1.5.98 be cancelled. It is mentioned in para No. 7 of the plaint that the property in question could not have been sold as it was unpartitioned ancestral property.

(4). In the application for amendment under O.6 R. 17 CPC it was mentioned that at the time of purchase of plot said Kalyan Sahai was a law paid employee of Electricity Board and he was not in a position to purchase the house, and therefore Kani Devi and Pratap ji after partitioning their immovable property had given certain amount to Kalyan Sahai & Prabu Dayal and they both purchased the property from that money. Therefore, the property in question has been purchased from the ancestral money. It is stated that by inadvertence this fact had not been mentioned in plaint, which fact is required to incorporate. However, the relief claimed in the suit will not be changed.

(5). Counsel for petitioner relies on the judgment in case of Akshaya Restaurant vs. P. Anjanappa and another (1), wherein the amendment in plaint taking definite

stand that defendant had entered into agreement for sale of suit land with defendant modified with the averment that defendant had entered into agreement with plaintiff for development of suit land. It was held by the Apex Court that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It was observed in para No.5 of the judgment:-

'We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It was observed in para No.5 of the judgment:-

'We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power under Section 115 CPC in permitting amendment of the written statement.'

(6). Reliance has also been placed on the judgment in case of A.K. Gupta and Sons Ltd. vs. Damodar Valley Corporation (2), wherein it was held that in normal course, the amendment should not be allowed to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred. Where, however, the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts the amendment is to be allowed even after expiry of the statutory period of limitation.

(7). Counsel for respondent relied on the judgment in case of M/s. Modi Spinning & Weaving Mills Co. Ltd. and another v. M/s. Latha Ram & Co. (3), wherein it was held that inconsistent and alternative pleading can be made in pleadings but seeking amendment to displace the plaintiff from the admissions made by defendant in written statement is not permissible.

(8). Reliance has also been placed on judgment in case of Vaidhya Shyam Sunder Joshi vs. Jain Vishwa Bharati Ladnu & Ors. (4), Mrs. Nirmal Sethi & others vs. Deep

Chand Anand & others (5), and Heeralal vs. Kalyan Mal & Ors. (6), wherein it was held that the admission once made cannot be allowed to be withdrawn.

(9). In the present case, in my opinion, there is neither any admission nor any inconsistent plea is being taken. Even though the suit relates to cancellation of sale deed of ancestral property and the amendment is being sought with the same relief. In the plaint it was mentioned that the suit property is ancestral property and had been purchased and constructed by Kalyan Sahai from his earning. The amendment is being sought to the effect only that Kalyan Sahai had spent the money which he had received because of partition of certain ancestral property mentioned in the application.

(10). After hearing learned counsel for the parties and going through the impugned order, I am of the opinion that the trial court has not exercised its jurisdiction in accordance with law. There was no new case made out by the amendment being sought. There is force in the submission of counsel for petitioner.

(11). For the reasons mentioned above, the impugned order of the trial court dated 19.2.2000 is set aside. The amendment application is allowed.

(12). With the above observations, the revision petition is allowed.