

Ram Niranjan Kajaria Vs. Vijay Kumar Kajaria and Ors.

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Court : Kolkata

Decided On : Aug-09-2016

Judge : Bench

Appellant : Ram Niranjan Kajaria

Respondent : Vijay Kumar Kajaria and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE APOT232OF 2016 GA2506of 2016 WITH CS696of 1978 RAM NIRANJAN KAJARIA Versus VIJAY KUMAR KAJARIA & ORS.APOT244of 2016 GA2112of 2016 WITH CS696of 1978 PAWAN KUMAR KAJARIA versus Sr.VIJAY KUMAR KAJARIA & ORS.BEFORE: The Hon'ble CHIEF JUSTICE MRS.MANJULA CHELLUR The Hon'ble JUSTICE ARIJIT BANERJEE Date : 9th August, 2016.

Mr.Sabyasachi Chowdhury, Advocate Mr.Kuldip Mullick, Advocate Ms.Pooja Shukla, Advocate Mr.P.K.Tripathi, Advocate ..for defendant no.2(D) (in item

5) for appellants (in item

6) Mr.A.Roy, Advocate Ms.N.Jalan, Advocate Mr.R.Upadhyaya, Advocate Mr.S.Basak, Advocate for petitioner/appellant(in item

5) Mr.Pradip Dutt, Sr.Advocate Mr.D.K.Dey, Advocate Ms.Arunima Lala, Advocate for respondents 1(b) & 1(j) Mr.Debnath Ghosh, Advocate Mr.Saunak Sengupta,

Advocate ..for defendant No.5 The Court :-This is the best example where the parties are making much ado about nothing.

In the fiRs.round of litigation, whether explanation in respect of certain admissions made by the defendants 5 and 12 could be allowed to be brought in by way of amendment to the written statement or not, was the moot question.

Apparently, learned Trial Court refused said amendment to the written statement but, however, Division Bench allowed the same which became the subject matter of Special Leave Petition to appeal and on merits an order came to be passed by the Apex Court on 18.09.2015.

The relevant paragraphs in the order of the Apex Court are paragraphs 22, 23, and 27 which read as under;22.

In the case before us, we are afraid, many of the factors referred to above, have not been satisfied.

It is significant to note that defendant Nos.5 and 12, after moving an application for amendment withdrawing the admissions made in the written statement, have filed a substantive suit attacking the alleged relinquishment of their claim in the family property and we are informed that the trial is in progress.

In that view of the matter, we do not propose to deal with the matter any further lest it should affect the outcome of the suit filed by the defendant Nos.5 and 12 since the declaration sought in this suit filed in 2005 is to take away the basis of the said relinquishment of the claim in the suit property.

However, as far as amendment is concerned, the attempt to wholly resile from the admission made after twenty five years.we are afraid cannot be permitted.

23.Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position.

It is seen that the issues have been framed in the case before us, only in 2009.

The nature and character of the amendment and the other circumstances as in the instant case which we have referred to above, are relevant while considering the delay and its consequence on the application for amendment.

But a party cannot be permitted to wholly withdraw the admission in the pleadings, as held by this Court in *Nagindas Ramdas v.*

Dalpatram Ichharam alias Brijram and others. To quote paragraph - 27: 27.

From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be *prima facie* satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid.

Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself.

Admissions, if true and clear, are by far the best proof of the facts admitted.

Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions.

The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof.

They by themselves can be made the foundation of the rights of the parties.

On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive.

They can be shown to be wrong. (Emphasis supplied).27.

In the above circumstances, we do not intend to make the suit filed in the year 2005 otherwise infructuous.

The application for amendment withdrawing the admissions made in the written statement on relinquishment of the claim to the suit property by Defendant Nos.5 and 12 is rejected.

However, we, in the facts and circumstances of the case, are of the view that Defendant Nos.5 and 12 should be given an opportunity to explain/clarify the admissions made in the written statement.

Accordingly, Defendant Nos.5 and 12 are permitted to file an application within one month from today limiting their prayer only to the extent of explaining/clarifying the disputed admissions in the written statement which will be considered on its merits and in the light of the observations made herein above. The aforesaid observation gives right to explain the admissions made by the defendants 5 and 12 on earlier occasion with regard to how in 1949 Mahabir Prasad Kajaria and his son were said to have entered into some family arrangement.

However, it is very clear from the decision of the Apex Court that the defendants 5 and 12 were allowed to explain/clarify the disputed admissions in the written statement which have to be considered on merits in the light of the observations made by the Apex Court.

By virtue of this direction of the Apex Court which should be treated as a permission to explain or clarify by defendants 5 and 12, there is no restriction whatsoever in giving their explanation or clarification as to why in the written statement in the FIRs instance they made such admissions.

Therefore, the earlier written statement containing fourteen paragraphs where alleged admissions were made by defendant Nos.5 and 12 have to be intact as it is and whatever the explanation now offered by defendants 5 and 12 have to be in the form of additional paragraphs numbered as paragraph 15 onwards.

Once these additional paragraphs are brought on record since the said defendants are entitled to take a different stand disputing part of the claim, denying part of the

claim or making totally a different claim it is for the Trial Court to understand the stand of the said defendants whether there is genuineness in the initial stage when they made admissions and whether they were justified in explaining the admissions made by them by additional paragraphs in the written statement.

The principle of approbation or reprobation can be applied at the time of deciding the case on merits.

However, after the additional paragraphs are introduced by way of amendment offering explanation or clarification by defendant Nos.5 and 12, the plaintiffs and other contesting defendants who have inter se dispute with the defendant Nos.5 and 12 shall have right to bring on record rejoinder or additional written statement either admitting the explanation or refuting the same.

Based on these additional pleadings brought on record needless to say the additional issues may have to be framed and then the parties have to argue on all the issues brought on record.

The entire process shall be done within a timeframe since the suit is pending since 1978.

The so called explanation/clarification offered by defendant Nos.5 and 12 in the application in question must be paragraph 15 onwards.

Therefore, paragraphs referred as paragraphs 1(a) to 1(q) which are underlined from page 9 to page 21 of the application have to be renumbered as paragraphs 15 onwards.

Since the office has already carried out the amendment to the existing paragraphs of the written statement, with our present order there will be total chaos and confusion in order to understand what exactly are the pleadings which are to be read by the Court either for framing the issues or deciding the issues after hearing the argument.

In order to remove confusion we direct defendant Nos.5 and 12 to file their written statement (without changing any of the earlier paragraphs 1 to

14) and new paragraph 15 onwards, as they stood prior to the amendment and addition of paragraph 15 onwards.

This shall be done within a fortnight from today and within two weeks thereafter rejoinder or additional written statement shall be filed by the plaintiff and the contesting defendants.

Thereafter, the Trial Court shall proceed to frame additional issues, if any, to be framed on the explanation/clarification by the defendant Nos.5 and 12 and denied by the plaintiff and other contesting respondents.

Both the appeals and applications are disposed of.

(MANJULA CHELLUR, C.J.) (ARIJIT BANERJEE, J.) GH.

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