

Satya Devi and ors. Vs. Baggi Devi

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Court : Himachal Pradesh

Decided On : Nov-09-2009

Judge : Sanjay Karol, J.

Appellant : Satya Devi and ors.

Respondent : Baggi Devi

Judgement :

Sanjay Karol, J.

1. The plaintiffs are partly aggrieved of the order dated 27.11.2008 passed by the Civil Judge (Jr. Division), Nadaun, Distt. Hamirpur (H.P.) in Civil Suit No. 226/1997 titled as Satya Devi etc. v. Amriti Devi etc. The order was passed on the plaintiffs' application filed under Order 1 Rule 10 CPC seeking permission to delete the name of original defendant No. 1 Smt. Amriti Devi, who died during the pendency of the suit and also seeking permission of the Court to amend the plaint under Order 6 Rule 17 CPC.

2. In the impugned order, the Court below has allowed the deletion of the name of original defendant No. 1 as her legal representative was already impleaded as original defendant No. 2. However, the prayer for amendment was rejected which part of the order has been assailed in the present petition. By way of amendment, the plaintiffs are seeking to change the heading and the relief clause of the plaint by incorporating another relief and making the original relief claimed to be an

alternate relief. The amendment stands rejected primarily for the reason that it would seriously prejudice the defendants as with dishonest intention the plaintiffs are trying to introduce altogether a different case based on different cause of action. The amendment would certainly change the nature of the subject-matter of the suit.

3. I have heard the learned Counsel for the parties and also perused the record.

4. The plaintiffs originally filed a suit for declaration to the effect that defendant No. 1 Smt. Amriti Devi is not the legally wedded wife of late Shri Roshan Lal s/o Shri Pala as late Shri Roshan Lal had married the plaintiff Smt. Satya Devi only. Plaintiff Smt. Satya Devi being the legally wedded wife and Smt. Durgi Devi being the mother of late Shri Roshan Lal are the only heirs and owners in possession in equal share of the estate left by late Shri Roshan Lal. In the prayer clause the plaintiffs prayed that the decree as per their prayer in the heading of the plaint be passed.

5. In the plaint, it has been mentioned that defendant No. 1 Smt. Amriti Devi, in collusion with defendant No. 2 and the revenue settlement staff illegally got a portion of the suit land mutated in her name without any notice to the plaintiffs and based thereupon is trying to dispossess them as Smt. Amriti Devi is also proclaiming herself to be the legally wedded wife of late Shri Roshan Lal.

6. The defendants filed a joint written statement claiming defendant No. 1 to be the widow of late Shri Roshan Lal and not the plaintiff No. 1.

7. The suit was filed on 3.5.1997. The knowledge of the mutation of the entries in favour of defendant No. 1 was acquired by the plaintiffs on 26.4.1997. The certified copies of the revenue record were made available on 17.12.1997 and the plaintiffs filed an application dated 12.3.1998 seeking amendment of the plaint.

8. By way of amendment, the plaintiffs seek to amend the heading of the plaint praying for a declaration that the defendant No. 1 Smt. Amriti Devi was not the legally wedded wife of late Shri Roshan Lal s/o Shri Pala as late Shri Roshan Lal had legally married only Smt. Satya Devi (plaintiff) who is the sole beneficiary of

the estate left by late Shri Roshan Lal in terms of his Will dated 6.2.1995. Further, the plaintiffs want to incorporate the prayer, in the alternative, to the effect that if the plaintiffs are not found to be exclusive owners in possession of the suit property then the plaintiff Smt. Satya Devi being the only legally wedded wife of late Shri Roshan Lal and Smt. Durgi Devi, plaintiff No. 2 being the mother of late Shri Roshan Lal are the only heirs and owners in possession in equal share of the estate. In the main body the plaintiffs want to incorporate a plea that the deceased Roshan Lal had left a Will dated 6.2.1995 in favour of Smt. Satya Devi by virtue of which she is the owner in possession of the estate. The reason for amendment is the change in circumstances as earlier the said Will had been given to the Patwari Halqua for entering mutation of the estate of Shri Roshan Lal but the defendant No. 1, without any notice and in collusion with the revenue officials, got the land mutated in her name.

9. Shri Roshan Lal died on 9.2.1995. According to the plaintiffs, the Will dated 6.2.1995 had been given to the authorities for the purposes of effecting the mutation. The dates of entries of mutation are 27.5.1995 and 31.3.1997. The suit was filed on 3.5.1997 in which reference of the entries of mutation is given. Undisputedly, with the certified copies of entries being made available to the plaintiffs, an application for amendment was immediately filed on 12.3.1998. Unfortunately, the application came to be decided only in terms of impugned order dated 27.11.2008.

10. The suit is yet at the stage of trial as the plaintiffs' evidence has not commenced. Evidently, the application took over a decade to be decided without any justifiable reason on record. The issue in controversy is the status of the plaintiffs and the defendant No. 1 as also their rights of inheritance in the estate of deceased Shri Roshan Lal. No doubt, earlier it was the plaintiffs' case that the estate of Shri Roshan Lal was inherited by them but however, this plea is now sought to be taken in the alternative as Smt. Satya Devi is claiming exclusive interest and right on the basis of the Will of Shri Roshan Lal. Insofar as the defendants are concerned, there is no change in the plea taken by the plaintiffs. The application for amendment is a joint application filed by the plaintiffs. Hence, the amendment, in no manner would cause any prejudice to the defendants. The

amendment cannot be said to change the nature, the subject- matter or the cause of action of the suit. The prime controversy in issue being the status and the right of inheritance of the ladies to the suit. Hence, the Court below erred in holding that the amendment would cause serious prejudice to the defendants.

11. It is a settled law that pleadings of the parties are to be read in entirety and are to be construed liberally and not in a pedantic manner. In the present case, there has been no delay in seeking the amendment. The plaintiffs had already made reference of the revenue entries wrongly recorded in favour of defendant No. 1. The amendment, in no way would alter the basic structure of the suit.

12. Reference to the decision of the Apex Court by Mr. Suneet Goel, learned Counsel for the respondents-defendants as reported in Alkapuri Cooperative Housing Society Ltd. v. Jayantibhai Naginbhai (deceased) through LRs : (2009) 3 SCC 467, cannot be pressed to their advantage. The Apex Court was dealing with a case where based on an independent cause of action against a third party, the said party was sought to be impleaded and plaint amended to incorporate a relief against the same. Hence, the judgment is not applicable in the facts of the present case.

13. For the aforesaid reasons, the impugned order to the extent that it has rejected the prayer for amendment is set-aside and the plaintiffs' prayer for amendment is allowed. The amended plaint be filed before the trial Court within four weeks. The parties are directed to appear before the trial Court on 25.11.2009. Considering that the matter has been pending since long, the Court below is directed to decide the case as expeditiously as possible and preferably within a period of 18 months from the first date of appearance fixed hereinabove. The parties undertake to appear before the Court below on the said date. Record be sent back immediately.

14. The petition is disposed of, so also the pending application.

15. The interim order dated 7.4.2009 is vacated.