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Court : Delhi

Decided On : Nov-16-2011

Judge : Pradeep Nandrajog; S.P. Garg, Jj.

Acts : Code of Civil Procedure (CPC) - Orders 7, 6 Rules 14, 17

Appeal No. : FAO (OS) 550 of 2011

Appellant : Devender Kumar Bajaj and ors.

Respondent : Satish Kumar Bajaj

Judgement :

1. Appellants are the plaintiffs of CS(OS) No.1387/1997.
2. Claim in the suit is to partition property bearing Municipal No.6/50, W.E.A. Karol Bagh, Delhi.
3. Foundation of the claim is the plea that Late Sh.Bakshi Ram Bajaj acquired ownership of the property under a registered sale deed dated 27.06.1962.
4. Alleging that Bakshi Ram Bajaj died intestate on 10.12.1985, being a Hindu and his wife having pre-deceased him, he being survived by 4 sons and 3 daughters, it is pleaded that all 7 children inherited 1/7th share in the property in question.
5. It is apparent that the foundation of the suit was by way of inheritance to the estate admittedly in the name of Bakshi Ram Bajaj.

6. Suit was opposed predicated a claim under a stated will dated 13.9.1993 executed by Late Sh.Bakshi Ram Bajaj.

7. Needles to state principal issue settled for adjudication between the parties was: Whether Bakshi Ram Bajaj died intestate or whether the will dated 13.9.1993 was the last legal and valid testament executed by the deceased.

8. Parties were not in dispute that an absolute title vested in Late Bakshi Ram Bajaj.

9. After issues were settled, parties led evidence, which needless to state centred around the will dated 13.9.1993.

10. Suit ripened for final arguments when an application under Order 7 Rule 14 of the Code of Civil Procedure was filed seeking to file additional documents.

11. The nature of the documents, if permitted to be brought on record, would have evidenced that the sale consideration paid to the vendor when property was purchased in the name of Late Bakshi Ram Bajaj was from the funds of M/s.Bakshi Ram Bajaj & Sons, stated to be a partnership firm.

12. The said application was dismissed.

13. Thereafter IA No.11095/2010 under Order 6 Rule 17 of the Code was filed praying that leave be granted to amend paras 1, 4 and 6 of the plaint.

14. Relevant would it be to highlight that the proposed amendment sought to take away the pleadings originally made that Late Bakshi Ram Bajaj was the absolute and exclusive owner of the subject property and replace the same with the pleadings that the subject property was the property of the firm M/s. Bakshi Ram Bajaj & Sons.

15. Vide impugned order dated 21.9.2011, I.A. No.10095/2010 has been dismissed principally on the ground that a totally new cause of action was sought to be introduced by way of the proposed amendment and that it was too late in the day for the plaintiffs to amend the plaint.

16. Questioning the reasoning of the learned Single Judge, learned counsel for the appellants relies upon the decisions reported as JT 2001 (2) SC 11 Ragu Thilak D.John Vs. S.Rayappan & Ors.; 2006 III AD (SC) 478 Rajesh Kumar Aggarwal & Ors. Vs. K.K.Modi & Ors. and (1983) 2 SCC 276 Tharayil Sarada & Anr. Vs. Govindan & Anr.

17. Before briefly reflecting upon the ratio of law which could be culled out from the decisions relied upon by learned counsel for the appellants, we need to highlight that the learned Single Judge has considered the scope of the power of the Court to permit an amendment to a plaint. The learned Single Judge has noted the fact that the instant suit was filed prior to the Code of Civil Procedure being amended vide Act No.22 of 2002 and thus the rigorous on the power of the Court as per amended Rule 17 of Order 6 would not shackle the power of the Court.

18. Considering the matter further, the learned Single Judge has noted that the power vested in the Court under Order 6 Rule 17 is intended to settle and decide all issues between the parties in one litigation and thus one should be liberal while considering amendments sought for.

19. However, the learned Single Judge has noted that the proposed amendment if allowed would introduce a totally new and an inconsistent plea.

20. Suffice would it be to state that the inconsistency would be that in the plaint originally filed the categoric admission was that Late Sh.Bakshi Ram Bajaj was the owner of the suit property. Proposed amendment took away the said admission and replaced it with a plea that the property belonged to a partnership firm. The consequential change in the cause would be that the original plaint which sought succession by way of intestate inheritance would now be seeking a relief with respect to dissolution of a partnership firm and share being determined with reference to the share of the partners in the firm.

21. Before we conclude our opinion, we need to deal with the authorities cited.

22. In Rajesh Kumar Aggarwal's case (supra), the original prayer sought a declaration qua the entitlement of defendant No.1 to continue as a trustee of

Modipon Limited Welfare Trust. It also claimed a decree of mandatory injunction directing defendant No.1 to hand over certain bonus share certificates in account No.9089. The issue was being predicated with respect to 77256 shares of Godfrey Philips (India) Limited statedly held in the name of the trust.

23. Before the suit went for trial, amendment was sought for. The amendment sought for was as under:- "12(a) The beneficiaries of the trust are not deriving any benefit from the creation of the Trust since 1991-1992 and as such the object of the Trust has been frustrated. The Trust as of date owns 77256 shares of GPI, but 57942 of the shares are in the exclusive power and possession of defendant No.1. Only 19314 shares of GPI are in the possession of defendant No.5 being the Secretary of the Trust. It is stated that GPI declared a dividend of `7/- per share in the year 1996-1997 when the market price of the shares was between `250-300/- per share which means a mere 2.5% re4turn on the investment per annum. If the said GPI shares were to be sold and then invested in Government Bonds/Securities the investment would yield a minimum (return of 10% to 12% per annum). It is pertinent to mention that since 1991-92, even the dividend declared on GPI shares are being solely appropriated by the defendant No.1 to the exclusion of the beneficiaries. Since defendant No.1 who is holding the said shares of the Trust is deriving benefit by holding the shares, the FAO (OS) 550/2011 Page 5 of 8 beneficiaries of the Trust are being deprived from the benefit which they are entitled to. It is in the interest of justice that the said shares may be sold and then invested in Government Bonds and/or Securities which will be in interest of beneficiaries, because at present the beneficiaries are not deriving any benefit by virtue of the said shares which are in power and possession of defendant No.1 as is evident from the records of the case."

24. The Supreme Court, in para 18, held that the cause to amend the plaint arose during the pendency of the suit and the proposed amendment did not change the basic structure of the suit and thus opined that the amendment ought to have been allowed.

25. In para 21 of the decision the Supreme Court highlighted as under:-

"21. We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon'ble Judges of the Division Bench and as to whether the application does not appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the Trust. It was alleged that respondent No.1 is not only in exclusive possession of 57,942 shares of GPI and the dividend received on the said shares but has also been and is still exercising voting rights with regard to these shares and that he has used the Trust to strengthen his control over GPI. Therefore, the proposed amendment was sought in the interest of the beneficiaries and to sell the shares and proceeds invested in Government bonds and or securities. A reading of the entire plaint and the prayer made thereunder and the proposed amendment would go to show that there was no question of any inconsistency with the case originally made out in the plaint. The Court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide. There are a plethora of precedents pertaining to the grant or refusal of permission for amendment of pleadings. The various decisions rendered by this court and the proposition laid down therein are widely known. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The amendments sought for by the appellants has become necessary in view of the facts that the appellants being the beneficiaries of the Trust are not deriving any benefit from the creation of the Trust since 1991-92 and that if the shares are sold and then invested in Government bonds/securities the investment would yield a minimum return of 10-12%. It was alleged by the appellants that respondent No.1 is opposing the sale in view of the fact that if the said shares are sold after the suit is decreed in favour of the appellants, he will be the loser and, therefore, it is solely on account of the attitude on the part of the respondent No.1 that the appellants have constrained to seek relief against the same."

26. In Ragu Thilak D.John's case (supra) the facts were that basing claim upon title the plaintiff sought permanent injunction restraining the defendants from demolishing the compound wall of the suit property and encroaching thereon

thereafter. Ex-parte ad-interim injunction not being granted, the threatened act having been committed and property trespassed upon, amendment sought was to bring said fact, by way of pleadings in the plaint, and to seek recovery of possession and damages.

27. Needless to state the Supreme Court held that the basic cause remained the same i.e. the title and hence possession.

28. The decision in Tharayil Sarada's case (supra) is a short order and is an authority on the point that where amendment is allowed at the appellate stage, the opposite party has to be granted an opportunity to file an additional written statement. We note that at the appellate stage the High Court had permitted the plaint to be amended and thereafter straightway passed a preliminary decree without granting time to the defendant to file an additional written statement.

29. Facts of the instant case would show that the very foundation of the claim is sought to be amended and thus we concur with the view taken by the learned Single Judge.

30. The appeal is dismissed in limine.

31. No costs.