

Rani and Another Vs. Chandra and Others

Rani and Another Vs. Chandra and Others

SooperKanoon Citation : sooperkanoon.com/953422

Court : Chennai

Decided On : Oct-05-2012

Reported in : 2012(5)LW453; 2012(7)MLJ892

Judge : R.S. Ramanathan

Appeal No. : C.R.P.(PD) No. 3462 of 2012 & M.P. No. 1 of 2012

Appellant : Rani and Another

Respondent : Chandra and Others

Advocate for Pet/Ap. : For the Petitioners: S. Sounthar, Advocate. For the Respondents: R1, L. Rajasekar, Advocate.

Judgement :

(Civil Revision Petition against the order dated 15.2.2011 in I.A.No.38 of 2010 in O.S.No.28 of 2008 on the file of the Sub Court, Tiruvarur.)

Defendants 1 and 2 are the revision petitioners.

2. The first respondent herein filed the suit for partition and the revision petitioners filed written statement stating that some of the properties purchased in the name of the first respondent and her husband were not included though they also belong to the joint family. Thereafter, no steps were taken by the revision petitioners to include those properties to the plaint schedule and after the plaintiff's side witness

was examined in chief, the revision petitioners filed application to include certain properties purchased in the name of the first respondent/plaintiff and her husband to the plaint schedule and that application was dismissed and as against the same, this revision is filed.

3. It is submitted by the learned counsel for the revision petitioners that in the written statement itself, necessary allegations were made and being a suit for partition, the entire properties belonging to the joint family are to be made available for partition and for that purpose, the application for amendment was filed and though it was filed after commencement of trial, no prejudice would be caused to the respondent and the suit will also be liable to be dismissed for partial partition if the revision petitioners are able to prove that some other properties are also available for partition and therefore, to have a complete adjudication, the court below ought to have allowed the application for amendment. The learned counsel for the revision petitioners relied upon the judgment in A.A.GANGA v. A.R.USHA (2010 (4) CTC 331) in support of his contention.

4. On the other hand, the learned counsel appearing for the first respondent submitted that the court below has rightly dismissed the application stating that no proof was adduced by the revision petitioners to prove that the properties which are sought to be included were purchased in the name of the first respondent and her husband from and out of joint family income and the first respondent and her husband are employed and having independent income and therefore, it cannot be stated that the properties were purchased out of joint family income. He further submitted that though the order was passed on 15.2.2011, the revision petitioners were able to drag on the proceedings under the pretext of pendency of revision and the revision is filed only in August 2012 and therefore, the petition may be dismissed with cost.

5. Admittedly, the suit is for partition and in a suit for partition all the properties belonging to the family must be made available. It is the case of the revision petitioners that the properties which are sought to be included by way of amendment also belong to the joint family, though purchased in the names of the first respondent and her husband and those properties are also available for

partition. As stated supra, in the written statement also, it is stated that two acres of property was purchased in the name of the husband of the first respondent and that property is also made available for partition. Though the first respondent denied the allegation that the properties were purchased out of joint family income and asserted that from their own income, the properties were purchased in their names, that can be decided only during trial and at this stage, the court need not have decided about the character of the properties.

6. In the judgment referred to above, I had an occasion to deal with the post trial amendment and the case involved in that judgment is also a suit for partition. In that case, after referring to various judgments of the Supreme Court, it has been held as follows:-

"10. In the case of Revajeeetu Builders & Developers vs. Narayanasamy & sons, 2009 (10) SCC 84 : 2009(13) Scale 241, the Apex Court has considered the scope of Order 6, Rule 17 CPC and has given certain guidelines and they are follows:-

1. Whether the amendment sought is imperative for proper and effective adjudication of the case?
2. Whether the application for amendment is bona-fide or mala-fide?
3. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money?
4. Refusing amendment would in fact lead to injustice or lead to multiple litigation?
5. Whether the proposed amendment constitutionally or fundamentally change the nature and character of the case; and
6. As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application?

11. The Honourable Supreme Court in the case of Vidyabai and others vs. Padmalatha and another, 2009(2) SCC 409 held as follows:-

"it is the primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, Proviso appended to Order 6, Rule 17 of the Code restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the Plaint.

12. Further in the judgment reported in the case of North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (died) by L.Rs., 2008(8) SCC 511, it has been held as follows:

"In so far as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C (as it stood at the relevant time) are concerned, these are well settled. Order 6, Rule 17 C.P.C postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil, which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions:- (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real question in controversy between the parties. Amendments 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. (Also see Gajanam Jaikrishna Joshi v. Prabhakar Mohanlal Kalwar)."

13. Further in the judgment reported in the case of Usha Ahamed vs. Rijwan Ahamd and others, 2008(3) SCC 717 the Honourable Supreme Court has held that the merit of the amendment is not a relevant consideration for allowing prayer for amendment.

14. In the judgment reported in the matter of Rajkumar (Dead) through L.Rs. vs. S.K.Shrwagi and Company Private Ltd. and other, 2008(5) CTC 253(SC):2008(14) SCC 364, the Honourable Supreme Court held that in case of amendments, after the commencement of trial, particularly after the completion of evidence, the

question of prejudice to the opposite party may arise and in such an event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the Proviso to Order 6, Rule 17, CPC and if the parties are able to satisfy the Court that in spite of the due diligence they could not raise the issue before the commencement of trial and the Court is satisfied with their explanation, amendment can be allowed even after the commencement of trial.

Therefore, as laid down by the Honourable Supreme Court, even after the amended Act of 2002, there is no total bar for allowing the amendment after the commencement of trial and if the parties are able to satisfy the requirement as contemplated as per proviso to Order 6, Rule, 17 CPC, the amendment can be allowed. In this case, the revision petitioners raised this issue in the written statement.

15. As state supra, in a suit for partition, all the properties are to be partitioned and as laid down by the Honourable Supreme Court in the judgment reported in *Ravajeetu Builders & Developers v. Narayanasamy & sons*, 2009(10) SCC 84 = 2009(13) SCALE 241, amendment can be allowed for proper and effective adjudication of a case and refusing the amendment would lead to the multiplicity of proceedings. In this case, admittedly there were some laches on the part of the revision petitioners in filing the application for amendment earlier, but considering the interest of the parties and to avoid multiplicity of proceedings and being a suit for partition, in my opinion, the petition filed by the revision petitioners for amendment to include some other properties in the plaint stating that they are also liable to be partitioned can be allowed as that would put to an end to the litigation and it would also avoid the multiplicity of proceedings. Further, while allowing or disallowing the amendment application, the Court should not go into the merits of the amendment and the lower Court has committed an error in deciding the merits of the amendment and held that the properties, which are sought to be included are the properties exclusively belong to the plaintiffs 1 and 2. Therefore, without going into the merits, whether the properties, which are sought to be included in the plaint schedule by way of amendment belongs to the joint family of the plaintiffs and the defendants, in a suit for partition, the parties are entitled to bring to the notice of the Court about the properties to be included for partition."

7. Following the same, the order of the court below is liable to set aside. However, having regard to the fact that the order passed by the court below is in February 2011 and the revision was filed only in August 2012 and the suit was protracted by the revision petitioners all these months, I am inclined to allow the revision subject to payment of Rs.2000/= towards cost to the counsel for the first respondent by the revision petitioners within a period of four weeks from the date of receipt of copy of this order failing which the order of the court below dismissing the application will be restored. The connected miscellaneous petition is closed.

8. The first respondent is permitted to file reply statement to the claim of the revision petitioners within a period of four weeks from the date of receipt of the order. The court below is directed to dispose of the suit within a period of three months thereafter.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com