(2012) 07 JH CK 0073

Jharkhand High Court

Case No: WP (C) No. 6534 of 2010

Sita Devi Jaiswara		APPELLANT
	Vs	
Shankar Ram Jaiswara and Others		RESPONDENT

Date of Decision: July 23, 2012

Acts Referred:

- Civil Procedure Code Amendment Act, 1999 - Section 16, 7
- Civil Procedure Code Amendment Act, 2002 - Section 16(2)
- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 15, Order 6 Rule 17, Order 6 Rule 18, Order 6 Rule 5, 151
- General Clauses Act, 1897 - Section 6
- Prevention of Corruption Act, 1988 - Section 7

Citation: (2012) 4 JLJR 176

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: Jai Prakash, Yogesh Modi, for the Appellant; V. Shivnath, Birendra Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.P. Bhatt, J.

Present writ petition has been filed for issuance of an appropriate writ/order/direction for quashing and setting aside the order dated 27.11.2010 passed by the learned Additional District Judge, Fast Track Court-V, Dhanbad in Title Appeal No. 81 of 2010 whereby the learned lower appellate court has rejected the application filed by the petitioner (original plaintiff) u/O. 6, R. 17 r/w Sec. 151 of the CPC for amendment of plaint to the extent of correcting the typing error which was wrongly typed as 1983 instead of 1993 in the plaint. Learned Senior Counsel Mr. Jai

Prakash appearing for the petitioner while describing the facts of the case, submitted that in the year 1943 the father of the petitioner purchased Schedule-''A'' property measuring 34 decimals by registered sale deed. The family of the father of petitioner namely Ram Dular Jaiswara comprised of his father Bhaglu Ram and mother Lakhi Devi and they used to live jointly. Ram Dular Jaiswara made construction over Schedule-''A'' property and on such construction Holding No. 313/268 was assigned by Dhanbad Municipality.

After the death of mother of Ram Dular Jaiswara, Bhaglu Ram developed intimacy with a married woman Basanti Devi. Respondent No. 1 is son of Basanti Devi from her previous husband. In course of time Ram Dular Jaiswara sold 10 decimals of land out of Schedule-''A'' property to different persons by different registered sale deeds, whereafter Ram Dular Jaiswara was left with 24 decimals which is detailed in Schedule-''B'' to the plaint.

Due to instigation of Basanti Devi differences cropped up in the family and various litigations were fought as detailed in the plaint.

Ram Dular Jaiswara who was employee of Bhalgora Colliery died under mysterious circumstances. The petitioner got compassionate appointment in place of her father in 1993 and shifted to Bhalgora in the year 1993 whereafter the respondent No. 1 started creating lot of trouble to the petitioner and her mother and started instigating the tenants to Schedule-''B'' property and therefore those tenants were made Defendant/Second Party in the suit. Some of those tenants started ascertaining their own right since 1993.

Because of these happenings in 1993 the petitioner and her mother filed a Title Suit No. 8 of 2002 on 23.1.2002 against Respondent No. 1 as Defendant/First Party and Respondents No. 2 to 7 as Defendant/Second Party for declaration of title and confirmation of possession regarding suit property given in Schedule-''B'' of the plaint and in the alternative for recovery of possession and the suit was decreed in favour of the Plaintiff vide judgment dated 26.2.2010. Against the said judgment the respondent filed a Title Appeal No. 81/2010 and in the said Appeal petitioner filed an application under Order VI, Rule 17 read with Section 151 CPC for amendment of the plaint only to the extent of correcting typographical error in Para 36 of the plaint for correcting 1983 to 1993. The said application was rejected vide order dated 27.11.2010.

2. Learned Senior Counsel for the petitioner submitted that the Court below has failed to appreciate that the amendment sought for was absolutely of formal nature as the petitioner (Original Plaintiff) has sought for amendment in respect of typographical mistake.

It is further submitted that aforesaid happening of 1993 was the cause for filing the suit by the petitioner and her mother. However, due to typographical mistake in Para-36 of the plaint where cause of action for the suit has been mentioned 1983

instead of the year 1993.

While referring averment made in the plaint pointed out that in the plaint in most of the paragraphs, the year was referred as 1993 but in Para-36 typographical mistake was committed and instead of 1993, the year was typed as 1983.

It is further submitted that the learned trial court took into consideration the amendment in the CPC by the CPC (Amendment) Act, 2002 (22 of 2002) which amended under Order VI Rule 17 of the CPC also according to which that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

The learned Lower Appellate Court was aware that the said amendment came into force on 1.7.2002, but failed to notice Section 16(2)(b) of the CPC (Amendment) Act, 2002 which reads as under:--

(b) the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the CPC (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC (Amendment) Act, 1999 and Section 7 of this Act.

The said amendment is not applicable in the present case in much as the plaint was filed on 23.1.2002 i.e. prior to coming into force of the said amendment on 1.7.2002.

Secondly the leaned Lower Appellate Court also did not consider or refer the statement made by Respondent No. 1 in his written statement in paragraph-30 where the defendant has stated that no cause of action arose in 1993 and put much stress on the ornamental statements made in initial paragraphs of every written statement regarding no cause of action, suit being not maintainable as it is barred by waiver, estoppel and acquiescence.

The learned Lower Appellate Court failed to take into consideration that the parties proceeded with the suit with clear understanding that cause of action arose in 1993 which is apparent from the pleadings of the parties.

It is well settled that the purpose and object of Order VI, Rule 17 of the CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Therefore, the prayer of the petitioner cannot be said to be an unjust prayer.

It is also well settled that the courts while deciding the prayer for amendment should not adopt a hyper-technical approach. Liberal approach has been held to be a general rule and the technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties.

3. As against that, learned Senior Counsel for the respondents (original defendants) submitted that the court below has, after careful consideration of the submissions made before it, passed an order, whereby the provisions contained in u/O. 6, R. 17 of the CPC have been properly considered and thereby, the application, which was made at the belated stage, has been rejected by the learned court below. It is further submitted that this application was submitted after conclusion of the arguments and the matter was posted for judgment. It is pointed out by the learned Senior Counsel for the respondents that in the plaint, there were two prayers and so far amended prayer clause (a) is concerned, the plaintiff has sought declaration with regard to Sale Deed which was executed on 29.8.1974, therefore, the question of limitation was very crucial issue for deciding the suit and the appeal, which has been preferred by the respondents being aggrieved and dissatisfied with the judgment delivered by the trial court. It is further submitted that the Articles 58 and 59 of the Limitation Act are very much relevant for the purpose of deciding this issue before the learned court below as the limitation prescribed under the said Article is three years from the date of execution of the documents.

It is further submitted that now on the pretext of typing error, the petitioner has made an attempt to justify that the suit was well within time. Learned Senior Counsel for the respondents, while referring application made by the present petitioner (original plaintiff) before the court below seeking amendment, pointed out that in the said application, for the first time, the plaintiff averred that she was dispossessed from the suit premises in 1993. Learned Senior Counsel for the respondents, while referring various paragraphs of the plaint, pointed out that no specific averment has been made by the petitioner (original plaintiff) in the plaint and therefore, the learned court below has taken considered view, while rejecting the application, that respondents (original defendants) has taken plea in the written statement that plaint is time barred. According to the learned Senior Counsel for the respondents (original defendants), view expressed by the appellate court is in consonance with the legal proposition as contained in O. 6, R. 17 of the CPC and therefore, the order passed by the court below is not required to be disturbed by this Court and the present writ petition filed by the petitioner (original plaintiff) may be rejected.

4. Learned Senior Counsel for the respondents in support of his submissions has referred to and relied upon various judgments, reported in T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Others, ; Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, ; Vijendra Kumar Goel v. Kusum Bhuwania, (1997) 11 SCC 457; J. Samuel and Others Vs. Gattu Mahesh and Others,

5. Considering the aforesaid rival submissions and on perusal of the impugned order, it appears that the application for amendment was submitted by the petitioner seeking amendment to the effect that since there was typographical mistake in para-36 of the plaint, the petitioner (original plaint) may be permitted to

carry out amendment to the effect that the year 1983 may be read as 1993. From bare reading of Paras-29, 30 & 31 of the plaint, it appears that actually the cause of action to suit was arose in the year 1993 when the petitioner shifted to Bhalgora. But in Para-36 it has been mentioned that the cause of action arose in the year 1983 and nowhere in the pleading it appears that a single act has been done in that year therefore it can be said that there is typographical error in Para-30; hence the amendment appears to be formal in nature. In para-30 of the written statement the respondents have also accepted that cause of action has not arose in the year 1993.

On perusal of the impugned order, it appears that the learned lower appellate court has wrongly appreciated the fact and came to the conclusion that the amendment if allowed will change the cause of action. The date of commencement of cause of action should be discovered from reading the whole plaint and not only by reading only one paragraph and by reading the plaint it reveals that actually the cause of action arose in the year 1993 but in para-36 due to typographical error the year is written as 1983.

So far as the grounds with regard to limitation raised by the learned Senior Counsel for the respondents, it is well settled that u/O. 6, R. 17 of the CPC, belated amendment cannot be refused if it is found that it is necessary for deciding the real controversy between the parties and it can be allowed on payment of costs.

With regard to the application of Amendment Act, 2002 in the present case Hon''ble Apex Court in the case of State Bank of Hyderabad Vs. Town Municipal Council, , held as follows:--

5. Order 6 Rule 17 of the Code reads thus:--

The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

6. The proviso appended thereto was added by the CPC (Amendment) Act, 2002 which came into force with effect from 1.7.2002. It reads as under:--

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. Section 16(2) of the amending Act of 2002 reads as under:--

16(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897,--

(a)* * *

(b) the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the CPC (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC (Amendment) Act, 1999 and Section 7 of this Act;

8. In view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order 6 Rule 17 of the Code shall not apply.

By the reasons given as above, I found force in the submission of learned counsel for the petitioner that the amendment made in O. 6, R. 17 of CPC by CPC (Amendment) Act, 2002 shall not apply to this case as this case has been filed on 23.1.2002 i.e. prior to coming into force of the said amendment on 1.7.2002.

I have also perused the judgment relied upon by the learned Senior Counsel for the respondents. On perusal of the judgment reported in Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, it appears that the plaintiff was seeking to introduce alternative relief of mandatory injunction for payment of specified amount.

In the case of Vijendra Kumar Goel v. Kusum Bhuwania, (1997) 11 SCC 457 , the suit was filed for declaration and injunction, thereafter, amendment was sought for conversion of the same into a suit for specific performance.

In the case of T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Others, the appellant by way of amendment sought to enhance its claim for damages.

From perusal of aforesaid cases, it appears that the facts of these cases are different from the case in hand, hence the principle evolved in these cases does not apply to the present case.

Learned Senior Counsel for the respondents have also relied upon a judgment in J. Samuel and Others Vs. Gattu Mahesh and Others, and submitted that the cases of typographical error is required to be considered in the light of the facts of the case and if it is found that the claim is well founded then only such amendment can be allowed. Learned Senior Counsel appearing for the petitioner also taken shelter of the same judgment and submitted that as the Hon''ble Apex Court has decided the said judgment by observing that the typographical error is required to be considered in the light of the facts and circumstances of the each case and error in the case of the petitioner is purely a typographical error.

I have also perused para-21 of the said judgment which defines typographical error as a mistake made in the printed/typed material during a panting/typing process and also includes error due to mechanical failure or slips of the hand or finger.

In my opinion, the error committed in the case in hand also appears to be typographical error as defined by the Hon''ble Apex Court.

I found substance in the argument advanced by the learned Senior Counsel for the petitioner that court below has not properly considered the amended provision of Order VI, Rule 17 of the CPC and the submission made in this behalf by the learned counsel for the plaintiff before the court below. Moreover, the amendment sought for appears to be necessary for deciding the real controversy between the parties.

6. In view of the above discussion, this Court is of the view that order passed by the court below rejecting the application for amendment is deserved to be quashed and set aside. The order passed by the court below rejecting the application for amendment is ordered to be quashed and set aside. This writ petition is allowed, accordingly, subject to deposit of cost of Rs. 250/-. It is clarified that the respondents will be at liberty to file further reply and contest the appeal on merit and the respondents will be permitted to adduce evidence in rebuttal in this regard.