(2009) 08 JH CK 0049

Jharkhand High Court

Case No: Writ Petition (C) No. 6866 of 2007

Ashok Rajak		APPELLANT
	Vs	
Basudeo Ram		RESPONDENT

Date of Decision: Aug. 28, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Hon'ble Judges: D.G.R. Patnaik, J

Bench: Single Bench

Advocate: R.P. Gupta, for the Appellant; Rajiv Anand, for the Respondent

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.
Challenge in this writ application is to the order dated-14.09.2007, passed by the Sub-Judge IV, Koderma in Title Suit No. 188 of 1986, whereby the petition filed by the petitioner (substituted defendant of the original defendant No. 12) under Order VI Rule 17 of the CPC for amendment of the original written statements, was rejected.

2. The grounds of rejection of the petitioner''s prayer for amendment of the written statement were as follows:

(i) That the prayer for amendment was made at a very belated stage at the fag end of the final arguments.

(ii) The proposed amendment sought for, in the opinion of the trial court, seeks to displace the plaintiff''s case completely.

(iii) By the appellate order by which the case was remanded to the trial court, the only issue which was to be decided by the trial court was the Issue No. VI.

3. For better appreciation, of the controversy raised in the pleadings in this writ application and in the light of the reliefs claimed, a brief statement of facts relating

to the case would be necessary:

The plaintiffs'' Basudeo Ram and others had filed the suit before the court below seeking partition of the Joint Family properties mentioned in the Schedule of the plaint.

The defendant No. 12, Most. Cheetni @ Jitni had filed her written statements in the suit, declaring her no objection if the decree is granted in favour of the plaintiff for the reliefs claimed.

By referring to the genealogical table, it was mentioned in the written statement of Most. Cheetni @ Jitni that her father, Tilak Ram had two wives, namely, Bandhani and Rukni. The defendant No. 12, Most. Cheetni @ Jitni and her brother, Khemchand were born from the first wife, namely, Bandhani. Khemchand died issueless and after his death, his wife deserted him and subsequently re-married.

From the second wife, namely, Rukni Devi, Karu Ram @ Dharma was born. Subsequently, both the wives of Tilak Ram, namely, Bandhani and Rukni died.

After the death of Tilak Ram, his son Karu Ram @ Dharma inherited the share and interest of his father over the suit properties and after the death of Karu Ram, the present plaintiffs have inherited to the extent of one-fifth share over the suit properties.

It was also acknowledged that the suit properties are joint and that there has been no partition by metes and bounds.

A preliminary decree was passed by the trial court on the basis of the pleadings filed by the original defendant in the plaint as also in the written statement, filed by the original defendant No. 12, declaring 1/10th share of the defendants, i.e. half of one-fifth share of Tilak Ram in the suit lands. Being dissatisfied, the plaintiff filed an Appeal against the preliminary decree. During the pendency of the Appeal, the original defendant No. 12, Most Cheetni died and in her place, the petitioner Ashok Rajak, being her son and legal representative, was substituted.

The appellate court remanded the suit back to the trial court for deciding issue No. VI.

After the substitution of his name in place of the deceased-defendant, Cheetni, the present petitioner Ashok Rajak filed a fresh written statement and had also filed an amendment petition seeking amendment of the original written statement of Most. Cheetni under Order VI Rule 17 of the Code of Civil Procedure. The proposed amendment sought for was to introduce the statement of fact that after the death of Tilak Ram, his son Karu Ram alongwith daughter Most. Cheetni @ Jitni (defendant No. 12) had jointly inherited the suit properties from their father, Tilak Ram.

4. Learned Counsel for the petitioner submits that the amendments sought for, were in fact formal in nature and by no stretch of imagination, could the same be

conceived as altering the nature of the suit or causing any prejudice either to the plaintiff or to the defendants. In fact, the amendment sought for are part of the admitted case of the plaintiffs themselves.

5. Relying upon the judgments, passed by the Supreme Court in the case of Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) and Others, , learned Counsel submits that the prayer for amendment of the written statement under Order VI Rule 17 of the CPC could not be rejected merely on the ground of delay, since the contesting party could be compensated by awarding cost. Learned Counsel would also refer to the judgment of this Court in the case of Gopal Prasad and Ors. v. Lakshmi Prasad reported in 2006 (2) J.C.R. 56 (Jhar.)and submit that in the interest of justice and for the just decision of the case, the amendment in the written statements should be allowed even by awarding compensatory cost to the other parties.

6. Opposing vehemently, the grounds advanced by the learned Counsel for the petitioner, Mr. Rajiv Anand, learned Counsel for the Respondent would argue that the learned court below has rightly rejected the prayer for amendment of the writ application both on the ground of delay and also on the ground that the proposed amendment would have the effect of displacing the plaintiffs completely from the suit properties and deprive them of the valuable right already accrued to them under the pleadings and the admissions made by the original defendant No. 12. It is further argued that by seeking to amend the written statement, the present defendant has wanted to introduce an entirely different and new case.

In order to buttress his argument, learned Counsel would rely upon the judgment of the Supreme Court in the case of Gautam Sarup Vs. Leela Jetly and Others, and also on the judgment in the case of Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., .

7. Order VI Rule 17 of the CPC provides for amendment of the pleadings and reads thus:

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

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.

Thus, Order VI Rule 17 of the CPC consists of two parts. While the first part is discretionary (may) and leaves it to the court to order amendment of pleading, the second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy

between the parties.

8. While exercising its discretion on a prayer seeking amendment of the pleadings, the Court has to assess as to whether the basic structure of the suit is likely to be changed or altered. In the case of amendments sought for in the written statements, the Court would also consider as to whether in the original written statements, any admissions have been made, the benefit of which had accrued to the plaintiff and whether by the proposed amendments, such admissions are sought to be resiled and the benefits, which had already been accrued to the plaintiff, are sought to be denied. The Court may refuse to allow the amendment of the written statements, if upon its assessment, it finds that the proposed amendment would amount to resile from the admissions made in the original written statements and denial of the benefits already accrued to the plaintiff on the basis of such admissions.

9. If, on the other hand, the proposed amendment in the written statement does not have the effect of withdrawal of admissions made in the original written statement, or denial of the benefits of such admission, which had accrued to the plaintiff and the amendment sought for would only add certain additional facts, supplementing the original pleadings, the trial court could exercise its discretion in allowing the amendment, by imposing costs for the delayed application for amendment in order to compensate the other parties.

10. In the case of Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, the principle laid down by the Supreme Court while explaining the scope of Order VI Rule 17 of the CPC was that "the court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide." It was also observed by the Supreme Court "that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice."

11. Applying the principles as laid down by the Supreme Court, to the facts of the present case, it appears that the plaintiffs in their plaint, had acknowledged the fact that the original defendant No. 12, was the surviving daughter of late Tilak Ram, born to his first wife Bandhani, while her step brother Karu Ram was born to Tilak Ram''s second wife Rukni Devi. It was also acknowledged that the plaintiffs are the grand-sons of Karu Ram. Thus, the logical inference is that after the death of both the wives of late Tilak Ram and after the death of Tilak Ram himself, his two issues, namely, the defendant No. 12, Most. Cheetni @ Jitni and Karu Ram were his surviving heirs and successors.

12. In the proposed amendment, the petitioner has wanted to clarify the stand, which was even acknowledged by the plaintiffs themselves, to confirm that the original defendant No. 12, Most. Cheetni @ Jitni and her brother Karu Ram were the only surviving heirs and successors of late Tilak Ram.

In the original written statement filed on behalf of the defendant No. 12, Most. Cheetni, she had conceded that the plaintiffs have one-fifth share over the suit properties. Such concession does not appear to have been denied by the petitioner/substituted defendant in the proposed amendment to the written statements. In absence of denial, there could be no cause for anxiety for the plaintiff to apprehend that the admissions made by the original defendant No. 12 are sought to be resiled or washed away by the proposed amendment or that the benefits accrued to the plaintiffs on the basis of the pleadings in the original written statements are sought to be denied. If on the basis of the genealogical table, admitted by the plaintiff, and after conceding the one-fifth share of the plaintiffs in the suit properties, the substituted defendants would want to advance their claim of right in the remaining portion of the suit properties, it would be for the trial court to consider the same and record appropriate findings.

13. From perusal of the impugned order of the court below, it appears that one of the grounds for rejecting the prayer for amendment is on the Court''s impression that the proposed amendment would change the nature of the suit and deny the benefits accrued to the plaintiff. While recording such reasons, the trial court does not appear to have elaborated as to in what manner was the proposed amendment likely to change the nature of the suit or deny the benefits accrued to the plaintiffs on the basis of the original written statement. As it appears from the proposed amendments, the facts intended to be placed on record are by way of supplementing the pleadings in the original written statement and it is not likely to resile from any admission made in the original written statement or deny the benefits of such admissions to the plaintiffs.

14. It is true that the amendment sought for, has been made at a belated stage. It is to be noted that as long as the original defendant No. 12 was alive, there was no scope for her legal representative to have any say in the suit. It was only after her demise and that too at the appellate stage, that her legal representatives including the present petitioner, could upon being impleaded, have occasion to consider the pleadings available on record. Under such circumstances, the rejection of the petitioner''s prayer for amendment of the written statements on the ground that it was filed at a belated stage is not altogether proper. The detriment caused to the other party on account of the delay if any, in making the prayer for amendment, could be adequately compensated by imposing costs.

15. As regards the ground that after remand of the suit, the trial court was to confine its attention to decide only upon the issue No. VI and to no other issue, it appears that the trial court has adopted a hyper-technical stand and has failed to exercise its discretion as laid down under the provisions of Order VI Rule 17 of the CPC in proper perspective.

16. For the above reasons, I find merit in this writ application. Accordingly, the same is allowed. The impugned order dated-14.09.2007, passed by the Sub-Judge VI, in

Title Suit No. 188 of 1986, is set aside. The petitioner''s application for amendment of the written statement in the terms prayed for is allowed. The Respondents may file further pleading in rebuttal. This order shall be however, subject to payment of cost of Rs. 10,000/- (Rupees Ten thousand) by the petitioner to the Respondent within four weeks'' from the date of this order, failing which this order shall automatically stand recalled and the writ application shall stand dismissed.