

(2017) 01 MP CK 0287
MADHYA PRADESH HIGH COURT
Case No: 18263 of 2016

Sukhram, son of Ghasiram

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision: Jan. 2, 2017

Acts Referred:

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Code of Civil Procedure, 1908, Order 6 Rule 17

Hon'ble Judges: Vijay Kumar Shukla

Bench: Division Bench

Advocate: Rajendra Kumar Gupta, D.K.Bohrey

Judgement

1. Heard on admission.

This is a petition filed under article 227 of the Constitution of India challenging the legality and validity of the order dated 29.09.2016 passed by the Second Civil Judge Class-II Churhat District Sidhi, whereby the application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter in short referred as "CPC") has been rejected.

2. The question for consideration is whether the order passed by the trial Court rejecting application for amendment so far challenge to sale deed dated 18.08.2005 suffers from any perversity, illegality or jurisdictional error. The validity of the order impugned has to be examined on the anvil of facts and law relating to the consideration of application for amendment under Order 6 Rule 17 of the CPC. It is apposite to refer the amended provisions of Order 6 Rule 17 of the CPC which

enables the parties to make amendment in the plaint which reads as under:

Order 6 Rule 17- Amendment of pleadings: 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;

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 the diligence, the party could not have raised the matter before the commencement of trial.

3. The above provisions deals with the amendment of pleadings. The provision inserted by Amendment Act 46 of 1999, was deleted, which has again been restored by Amendment Act 22 of 2002 (as quoted above) but with an added proviso to prevent application for amendment being allowed after trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso to same extent, curtails absolute discretion to allow amendment at any stage. Now if the application is filed after commencement of the trial, the party seeking amendment in the pleadings must show that inspite of due diligence such amendment could not have been sought earlier. Further the provisions indicate that the basic percepts for allowing the application for amendment of pleadings are that such amendment shall be necessary for the purpose of determining the real question of controversy between the parties. The party cannot be allowed to set up new case under the guise of amendment by-passing the provisions of limitation, delay and other factors.

4. The trial Court has taken into consideration all the relevant facts for consideration of application for amendment filed by the plaintiff.

5. The petitioner filed a suit for declaration and permanent injunction and also challenging registered sale deed dated 05.12.2009 which was executed in favour of the defendant no.4 with the collusion of defendant nos. 10 and 11. The suit was filed in the year 2010. After a period of 5 years, the petitioner filed an application for amendment under Order 6 Rule 17 of the CPC in year 2015, whereby he sought to challenge the sale deed dated 18.08.2005 alleged to be executed by the defendant no.4 in favour of the defendant no.12. The Court below has rejected the said application on the ground of delay and limitation as the petitioner sought an

amendment to challenge the alleged sale deed dated 18.08.2005 in year 2015 in the present suit. The Court has further recorded a finding that the petitioner was well aware of the sale deed executed in the year 2005 when he filed the present civil suit on 14.07.2010. From bare perusal of the plaint (Annexure P-2) also it is evident that the petitioner has shown cause of action arises on 05.12.2009 and 08.12.2009. The Court has rejected amendment application so far it related to clause 2-A and 2-D of the application for amendment. However, the application seeking amendment regarding valuation of the Court fee and its payment was allowed.

6. In the application for amendment, the petitioner has not stated any reason for not challenging the alleged sale deed dated 18.08.2005 in the plaint. He has also not stated that what has prevented him from challenging the said sale deed earlier.

7. At this stage, I think to condign to survey authorities or point of consideration of application for amendment where the proposed amendment is barred by limitation. In the case of *Voltas Ltd. Vs. Rolta India Ltd.*(2014) 4 SCC 516, the Apex Court held as under in Para 29 which is quoted as under:

Mr. Nriman, learned Senior Counsel, has also contended that the counterclaims filed before the learned arbitrator is an elaboration of the amount stated in the notice and, in fact, it is an amendment of the claim of the respondent which deserved to be dealt with by the learned arbitrator. In this context, we may refer with profit to the ruling in *K.Raheja Constructions Ltd. V. Alliance Ministries* wherein the plaintiff had filed a suit for permanent injunction and sought an amendment for grant of relief of specific performance. The said prayer was rejected by the learned trial Court. A contention was canvassed that the appellant had not come forward with new plea and, in fact, there were material allegations in the plaint to sustain the amendment of the plaint. The Court observed that having allowed the period of seven years to elapse from the date of filing the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963 any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent.

8. The said principle has been reiterated in *South Konkan Distilleries Vs. Prabhakar Gajanan Naik* (2008) 14 SCC 632 and *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit Vs. Ramesh Chander*.

9. In *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons* (2009) 10 SCC

84 while laying down some basic principles for considering the amendment, the Court has stated that as a general rule that Court should decline amendment if a fresh suit on the amendment claims would be barred by limitation on the date of application.

10. The Apex Court in case of Union of India Vs. Pramod Gupta (2005) 12 SCC 1. The relevant para is quoted as under:

135. Delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings. The High Court neither assigned sufficient or cogent reasons nor applied its mind as regards the relevant factors while allowing the said application for amendment. It has also not been taken into consideration that the application for amendment of pleadings might not have been maintainable in view of the statutory interdict contained in sub-section (2) of Section 25 of the Act, if the same was applicable.

11. In the light of above discussion of facts and law, I do not find any illegality or perversity in the order passed by the trial Court in disallowing the application for amendment. The Court has rightly taken into consideration that there was no averment in the application that what has prevented the plaintiff to challenge the sale deed of year 2005 when the suit was filed in the year 2010. The trial Court has rightly held that challenge to the said sale deed of year 2005 in year 2015 by way of application for amendment is bared by the provisions of Limitation Act.

12. The order passed by the trial Court does not suffer from any jurisdictional error or any infirmity warranting interference by this Court under Article 227 of the Constitution of India. The proposed amendment which has been rejected could not be said to be necessary for adjudication of real controversy of the present case. Even otherwise it is well settled in law that the jurisdiction of this Court under Article 227 of the Constitution of India cannot be exercised to correct all errors of judgment of the Court within its limitation. It can be exercised whether the order is passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law and justice (see) Jai Singh and Others Vs. M.C.D and Others (2010) 9 SCC 385 and Shalini Shyam Setty Vs. Rajendra Shankar Patil (2010) 8 SCC 329.

13. In the result the order rejecting the application Order 6 Rule 17 is upheld and the petition is dismissed.