

Kuldeep Singh Vs S.Prithpaul Singh

Court: Jammu & Kashmir High Court

Date of Decision: July 2, 1998

Acts Referred: Jammu and Kashmir Civil Procedure Code, 1977 " Order 2 Rule 2, Order 2 Rule 4, Order 6 Rule 17, 115

Citation: (2000) KashLJ 17 : (1999) 2 SriLJ 554 : (1999) SriLJ 554

Hon'ble Judges: G.L.Raina, J

Bench: Single Bench

Advocate: M.H.Attar, M.Abdul Qayoom, Advocates appearing for the Parties

Judgement

1. The decision of the Subordinate Court on all questions of law and fact not touching its jurisdiction is final and, however, erroneous such a

decision may be, it is not revisable under Subss. (a) and (b) of section 115 CPC. On the other hand, if by an erroneous decision on a question of

fact of law touching its jurisdiction, e.g. on a preliminary fact upon the existence of which its jurisdiction depends, the Subordinate Court assumes a

jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final, and is subject to review by the High Court in

its revisional jurisdiction, under the Subsections (a) and (b) of section 115.

So is laid down by the Apex Court in case 'Ram Iyer appellant Versus Sunderesa Ponnapoonder, Respondent, AIR 1966 Supreme Court 1431.

2. The question is on which side of the line does the present case lie and whether the decision of the District Judge allowing amendment of the

plaint is open to review by this Court in its revisional jurisdiction. In order to ascertain the limited extent of this jurisdiction the examination of the

circumstances in which the discretion was exercised by the Trial Court is warranted.

3. A dispute of title and possession got projected through the suit instituted by nonapplicant Prithpaul Singh, as his ownership over the identified

land measuring 3 kanals and 15 marlas/situated at RambirPora, Tehsil Anantnag, was disputed by the defendants. He sought possession of all the

subject matter of the suit on the basis of the declaration sought. The suit while on the dockets of this Court got transferred to the Court of District

Judge, Anantnag who was required by the circumstances to dispose of the application that sought amendment of the plaint.

4. Vide the impugned order the learned District Judge allowed the prayer for amendment of plaint subject of course to the payment of quantified

costs. Aggrieved by the order allowing the amendment it has been assailed in this revision motion.

5. It will be noticed that in the preamended plaint the plaintiff has sought declaration of his title and in the second place the possession of the

property in dispute. Through the medium of amendment he introduced and added the relief for mesne profits.

6. It is vehemently contented by the defendants that the allowed amendment is in derogation of the mandate of order 2 Rule 2 CPC, in so far as

having not sought the relief of mesne profit in the initial stage the plaintiff is debarred for seeking it by way of amendment. Case law has been cited

to convass that the amendment has violated the mandate of law viz provisions of Rule 2 Order 2 CPC, so the District Judge having exercised its

jurisdiction illegally his order warrants interference through the medium of this revision.

7. The legal proposition is above controversy that courts can always allow the plaintiff to amend plaint in order to give a relief which is either

implied asked for or which does not alter the nature of the suit. No precedents need to be cited as to the powers of the trial courts qua the prayer

for amendment but suffice to say that while exercising the Discretion to allow the amendment of pleading the Court will not ordinarily allow an

amendment which takes away a right which has accrued in favour of the other party on the basis of limitation or which is not expressly or by

necessary implication barred by law.

8. The argument that Order 2 Rule 2 stood in the way of the plaintiff to seek the relief for mesne profits disentitled him to introduce that relief by

way of amendment. Order 2 Rule 2 is intended to deal with the vice of surrendered cause of action. The Rule runs as:

Suit to include the whole claim Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of

action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim. Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not

afterwards sue in respect of the portion so omitted or relinquished. Omission to sue for one of several reliefs. A person entitled to more than one

relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all

such reliefs, he shall not afterwards sue for any relief so omitted. Explanation. For the purpose of this rule an obligation and a collateral security for

its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

9. It is clear for the plain reading of the Rule the combined effect of all the sub rules of Rule 2 is that when there is one and the same cause of

action, the plaintiff must sue, in one suit for the enforcement of his rights the whole cause of action and if he relinquishes or omits to sue in respect

of any part of that cause of action then he cannot subsequently sue for the part so relinquished. The further effect of the sub rule is that although

there may be one or the same cause of action but there may in respect of that cause of action be several reliefs claimable. If there is a omission to

sue for any relief emanating out of the same cause of action then the plaintiff shall not afterwards sue in respect of the portion so omitted or

relinquished. The bar of Rule 2 Order 2 applies when there is one and only one cause of action.

10. The plain reading of sub rule (4) of Rule 2 indicates that a cause of action for mesne profits can be joined with the cause of action for recovery

of immovable property. To put in other words it can be said that Rule 2 sub rule (4) leaves the scope that cause of action for the claim of mesne

profit is a distinct cause of action from the cause of action for recovery of immovable property. It is so in that sub rule (4) permits the joining of

claim for recovery of immovable property with the claim for mesne profits. The bar undersubrule (2) of Rule 2 will not therefore apply where in a

suit for recovery of immovable property the relief for mesne profits is not jointed, it can otherwise be in my considered opinion said that claim to

recovery of immovable property being a separate and distinct cause of action to the claim for mesne profits the nonjoining of these two claims in

one suit will not attract the penalty of Rule 2. Sub rule (4) provides, as noted above, that cause of action for claim to mesne profits can be joined

with the cause of action for recovery of immovable property. On the plain reading of sub rule (4) of Rule 2 it can safely be said that the penalty

under Rule 2 sought to be imposed does not get attracted.

11. While indicating the distinction between the words ""Cause of action"" and ""Claims"" the Full Bench of the Bombay High Court, in case Shanker

Lal Vs. Gangabisen in AIR 1972 Bombay 326 held:

Order 2 Rule 2 must therefore be read alongwith the order 2 Rule 4. We have already shown how in Order 2 Rule 4 claims for mesne profits and

claims for damages are contrasted and contradistinguishable from the cause of action for the recovery of immovable property, and in so far as they

are contradistinguished, it is clear that the law regards the two as different claims or causes of action. We have already shown that there is no

difference between the words ""cause of action"" and ""claims.

12. Rule 4 is in part an exception to the general principle laid down in Order 2 Rule 3. It is also an exception to Order 2 Rules 1 and 3. Rule 4 is

thus completely divorced from Rule 2. It is on this principle rightly contended that a claim to the reliefs for recovery of immovable property and for

mesne profits being different and cotradistinguishable a party who omits to seek the relief of recovery of property with the claim of mesne profit

can bring separate suits for the two claims. The bar of sub rule (2) or sub rule (3) will not apply to such claims to reliefs. If two different suits for

recovery of immovable property and other for recovery of mesne profits are not hit by any provision of Order 2 CPC men it cannot be

countenanced that omission to seek mesne profits in the suit of recovery of immovable property disentitled the plaintiff for suing for the claim to

mesne profits independently or at a latter stage by introducing the relief thereto by way of amendment.

13. The impugned order allowing amendment has had the effect to introduce the claim to relief of mesne profits of the immovable property. It

cannot be in the scheme of Order 2 CPC be said that joining of the said relief at a subsequent stage with the relief for recovery of possession is hit

by the bar created by the sub rule (2) or sub rule (3) of Order 2.

14. The learned District Judge has by allowing the amendment through the impugned order neither failed to exercise jurisdiction vested in him nor

exercised a jurisdiction not vested in him by law. This court's jurisdiction cannot be invoked under clause (a) or clause (b) of section 115 CPC.

Now the only question that remains to be answered is whether by allowing the amendment the District Judge has exercised his jurisdiction illegally

or with material irregularly. Answer to this question will determine the fate of this revision motion.

15. As indicated and discussed above the cause of action for the claim to the recovery of immovable property being cotradistinguishable and

different from the cause of action to the claim of mesne profits, the non joining of the two causes of action in the preamended plaint did not attract

the bar of Order 2 Rule 2 or Rule 3. Even if the amendment had not sought to introduce the relief to the claim of mesne profits yet the plaintiff could

have such a separately on that cause of action against the defendants. That being the legal position, it is not open to the defendants to complain that

having at one stage abandoned or relinquished the claim to the mesne profits that fact would disentitled the plaintiff to introduce that relief either by

way of amendment or by way of a separate suit. I am of the considered opinion that the impugned order does not suffer from any illegality or

irregularity so as to be interfered with under clause (c) of section 115 CPC. The authorities reported in AIR 1954 Supreme Court 352 and SLJ

1984 J and K 1717 are distinguishable on facts from the present case. For what has been said above the revision petition merits dismissal. The

revision petition, is therefore, dismissed. The record be remitted to trial court for further proceedings where the party shall appear on 27/07/1998.