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2024 INSC 151

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2886 OF 2012

BASAVARAJ ... **Appellant(s)**

VERSUS

INDIRA AND OTHERS ... **Respondent(s)**

J U D G M E N T

Rajesh Bindal, J.

1. Vide impugned order[1] passed by the High Court[2], an application filed by respondents No. 1 and 2/plaintiffs for amendment of the plaint was allowed subject to costs of ₹2,000/-.

2. Briefly, the facts available on record are that respondents No. 1 and 2 filed a suit[3] for partition of the ancestral property belonging to their grand father pleading that no actual partition of the property has

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[1] Order dated 18.08.2010 passed in W.P. No. 82086 of 2010
[2] High Court of Karnataka, Circuit Bench at Gulbarga
[3] Original Suit No. 151 of 2005

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ever taken place. When the suit was at the fag end, an application was filed by respondents No. 1 and 2 seeking amendment of the plaint. The amendment sought was to add prayer in the suit for a declaration that an earlier compromise decree dated 14.10.2004 was null and void. As prayer was not made earlier, the court fee required thereon was also sought to be affixed. The ground on which the amendment was sought was that due to oversight and mistake, the respondents No. 1 and 2/plaintiffs were unable to seek the relief of declaration. No prejudice as such would be caused to the defendants as limited relief is for fair partition of the ancestral property. The Trial Court[4] dismissed the application. However, when the order[5] was challenged before the High Court, the same was set aside and the amendment prayed for by the plaintiffs was allowed subject to payment of costs.

3. Learned counsel for the appellant submitted that in the case in hand, there was a family partition in Original Suit No. 401 of 2003 filed by Smt. Mahadevi and Smt. Sharnamma, wife and daughter-in-law respectively of defendant No.1/Shivasharnappa, impleading the plaintiffs and the defendants as party. A compromise decree dated 14.10.2004 was

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[4] First Additional Civil Judge (Senior Division) at Gulbarga
[5] Order dated 31.05.2010

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passed by the Lok Adalat, District Legal Services Authority, Gulbarga. Thereafter, respondents No. 1 and 2 filed a fresh suit in 2005 seeking partition of the ancestral property. Though in the suit pleading was there with reference to the earlier compromise decree, however for the reasons best known to the plaintiffs, no challenge was made to the same. As a result of the order passed by the High Court, the nature of the suit was changed from partition to declaration, which is impermissible.

3.1 Further in terms of proviso to Order VI Rule 17 CPC, no amendment could be allowed after commencement of the trial. In the case in hand, the suit was at the fag end, as fixed for arguments.

3.2 It was further submitted that the compromise decree was passed on 14.10.2004. In terms of the provisions of Order XXIII Rule 3 CPC, the same could be challenged only before the same Court and not before any other Court.

3.3 He further contended that there was a specific stand taken by the appellant/defendant No. 2 in the written statement that there being a compromise decree in existence, no relief may be admissible to respondents No. 1 and 2, unless that decree is challenged. The written statement was filed in August 2005, still no steps taken by the respondents

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No. 1 and 2 in that direction. Part of the suit property having been sold, an amendment was carried out in the plaint in July 2006 to implead the subsequent purchaser. Even at that stage, this relief was not sought.

3.4 It was further contended that the relief of declaration of compromise decree being null and void prayed for by way of amendment otherwise also was time barred as the compromise decree was passed on 14.10.2004. The application for amendment was filed on 08.02.2010. Even the court fee was sought to be affixed at the time of filing of application for amendment.

3.5 The application filed by respondents No. 1 and 2 did not meet the pre-conditions laid down in Order VI Rule 17 CPC for permitting respondents No. 1 and 2 to amend the pleadings at the fag end of the trial. No due diligence was pleaded. All what was stated was that there was oversight on the part of respondents No. 1 and 2/plaintiffs.

3.6 Referring to the parties who were there in the compromise decree, it was argued that some of them are not parties in the suit in question, hence otherwise also challenge to the compromise decree may not be maintainable.

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3.7 In support of the arguments, reliance was placed upon the judgments of this Court in **Revajeetu Builders and Developers v. Narayanaswamy and sons and others**[6] and **Vidyabai and others v. Padmalatha and another**[7]

4. In response, learned counsel for respondents No. 1 and 2 submitted that it was merely an oversight mistake which occurred at the time of filing of the suit and at the subsequent stage for which the amendment was prayed for by respondents No. 1 and 2. It is not a case where the pleadings to that effect are not available on record. Respondents No. 1 and 2 had fairly pleaded about the earlier compromise decree. Inadvertently, the prayer for declaration thereof as null and void could not be made. The court fee also could not be deposited. No fresh evidence is to be led. The case is at the arguments stage. The same can be argued with mere re-framing of the issues. It will avoid multiplicity of litigation and ultimately complete justice will be done amongst the parties, who are merely praying for partition of the ancestral property. The other side can be compensated with costs, as was even done by the High Court. No prejudice as such will be caused to the appellant.

[6] (2009) 10 SCC 84
[7] (2009) 2 SCC 409

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Substantial justice will be done to the parties. In support of the arguments, reliance was placed upon a judgment of this Court in **Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy and others**[8] and **Estralla Rubber v. Dass Estate (P) Ltd.**[9]

5. Heard learned counsel for the parties and perused the relevant referred record.

6. It is a case in which the appellant has been forced into avoidable unnecessary litigation to rush to this Court. The suit was filed by respondents No. 1 and 2 in 2005 seeking partition of the ancestral property. It was specifically pleaded in the suit that there was a compromise decree between the parties. However, as may be the advice to respondents No. 1 and 2, despite there being a compromise decree existing between the parties, no prayer was made in the suit with reference thereto, if any grievance was there. It remained simpliciter a suit for partition. A specific stand was taken by the appellant in the written statement to the effect that the suit is not maintainable unless cancellation of the compromise decree is prayed for as the same would operate as res-judicata. The written statement was filed in August 2005. Despite the

[8] (2001) 8 SCC 115
[9] (2001) 8 SCC 97

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specific pleading of the appellant, the respondents No. 1 and 2 did not take any steps.

6.1. During the pendency of the suit, an amendment was carried out by respondents No. 1 and 2 to implead respondent No. 4 in the suit who was the purchaser of a part of the suit property. The same was allowed on 01.07.2006. Thereafter, trial of the suit continued. When it reached at the stage of arguments in February 2010 an application was filed by respondents No. 1 and 2 seeking amendment of the plaint. The reasons assigned to file the belated application seeking amendment of the plaint were that due to oversight and by mistake, the respondents No.1 and 2 failed to seek relief of declaration of the compromise decree being null and void and were unable to deposit the court fee.

7. The law with reference to challenge to a compromise decree is well settled. It was opined in **Pushpa Devi Bhagat (Dead) through L.R. Sadhna Rai (Smt.) v. Rajinder Singh and others**[10] that (i) appeal is not maintainable against a consent decree; (ii) no separate suit can be filed; (iii) consent decree operates as an estoppel and binding unless it is set aside by the court by an order on an application under the proviso to

[10] (2006) 5 SCC 566

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Order XXIII Rule 3 C.P.C.; and (iv) the only remedy available to a party to a consent decree is to approach the Court which recorded the compromise as it was opined to be nothing else but a contract between the parties superimposed with the seal of approval of the Court. Relevant part of paragraph No. 17 thereof is extracted below:

> "17. The position that emerges from the amended provisions of Order 23 can be summed up thus:
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> (i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.
>
> (ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.
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> (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

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> (iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.
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> Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made…"

8. Proviso to Order VI Rule 17 CPC provides 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

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could not have raised the matter before the commencement of trial. In the case in hand, this is not even the pleaded case of respondents No. 1 and 2 before the Trial Court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of the respondents No. 1 and 2/plaintiffs.

8.1. The relevant paragraphs of the application seeking amendment of the plaint are reproduced hereunder:

> "2. That, due to over sight and by mistake the Plaintiff was unable to sought relief declaration of decree as null and void and unable to pay required court fee some unavoidable circumstances and the proposed amendment is very essential for deciding the matter in dispute.
>
> 3. xxx
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> 4. That, if the proposed amendment is allowed no prejudice will be cause to the other side, on the other hand if it is not allowed then the deponent will be put to great loss and

will also leads multiplicity of litigation's. Hence it is just and proper to allow the proposed amendment to meet the ends of justice."(sic)

9. This Court in **M. Revanna v. Anjanamma (Dead) by legal representatives and others**[11] opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order VI Rule 17 C.P.C. prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No. 7 thereof is extracted below:

> "7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the

[11] (2019) 4 SCC 332

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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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

(emphasis supplied)

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10. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

11. This Court in **Revajeetu's** case (supra) enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.

12. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to be seen at the time of consideration of any application for amendment of pleadings. Any right accrued to the opposite party cannot be taken away on account of delay in filing the application.

12.1 In the case in hand, the compromise decree was passed on 14.10.2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 08.02.2010 i.e. 5 years and 03

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months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (Reference can be made to Article 59 in Part-IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.

13. Further, a perusal of the memo of parties in the suit in question and in the compromise decree shows that the plaintiffs i.e. Sharnamma @ Mahananda wife of Basvaraj and Mahadevi wife of Shivsharnappa Nasi in Original Suit No. 401 of 2003 are not party to the present litigation. Even if on any ground the amendment could be permitted, still no relief could be claimed with reference to setting aside of the compromise decree as all the parties thereto were not before the Court in the suit in question.

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14. For the reasons mentioned above, the present appeal is allowed. The impugned order passed by the High Court is set aside. The application filed for amendment of the plaint is dismissed. The appellant shall be entitled to cost of the proceedings, which are assessed at ₹1,00,000/- to be paid jointly or severally by respondents No. 1 and 2. The appellant shall be paid the amount of cost on the next date of hearing before the Trial Court by way of demand draft.

……………………………….J.
(C.T. RAVIKUMAR)

……………………………….J.
(RAJESH BINDAL)

New Delhi
February 29, 2024.