



2024 INSC 726

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.....OF 2024
(Arising out of Special Leave Petition (Civil) No.30324/2019)

DINESH GOYAL @ PAPPU ... APPELLANT(S)

VERSUS

SUMAN AGARWAL (BINDAL) & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

2. Impugned in this appeal is a judgment and order of the High Court of Madhya Pradesh, Gwalior Bench, passed in M.P. No.1695 of 2018 dated 21st August, 2019. The application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908¹, by respondent No.1² was allowed setting aside order dated 14th March, 2018 passed by the 8th Civil Judge, Class-2, Gwalior,

¹ 'CPC' for short

² Hereinafter referred to as 'the plaintiff'

District Gwalior in Civil Suit No.241-A/2016, whereby such application stood rejected.

3. The limited question that arises for our consideration is whether the High Court committed an error in allowing the amendment to the plaint filed by the present respondents.

4. The facts, shorn of unnecessary detail, as necessary for disposal of the present appeal are:-

4.1 The appellant³ and respondents, are siblings being children of Smt. Katoribai. The dispute relates to House No.27/1695, renumbered as 1695/1804 situated at Gangamai Santar, Murar, District Gwalior, M.P.⁴, which was purchased by way of registered sale deed dated 1st January, 1987.

4.2 On 14th January, 2013 Smt. Katoribai, executed a Will and thereby bequeathed the suit property to the defendant herein. She subsequently passed away on 5th March, 2013. As per the defendant, the respondents recognised the Will and acted in furtherance thereof by way of agreements dated 20th December and 28th December, 2014.

4.3 Smt. Suman Agarwal (Bindal), the plaintiff filed a suit bearing No.241-A/2016 before 8th Civil Judge, Class-2, Gwalior (M.P.), claiming 1/5th share in the suit property by stating that the same

³ Hereinafter referred to as 'the defendant'

⁴ Hereinafter referred to as 'the suit property'

belonged to their father late Shri Gyan Chand Goyal. The defendant filed a written statement on 25th July, 2016 praying that the suit be dismissed in view of the Will executed by Smt. Katoribai.

4.4 Pursuant to an application dated 28th July, 2016 filed under Order XI Rule 14 CPC seeking the production of the Will as well as the Agreements, the defendant produced the same. A temporary injunction was also ordered barring any creation of the third-party rights.

4.5 Mutation in favour of the defendant was carried out in the relevant records. The plaintiff filed an application under Order VI Rule 17 read with Section 151 CPC seeking amendment of her plaint to add a list of movable properties in the property sought to be partitioned as part of the suit, as also questioned the genuineness of the Will. On 26th October, 2017 leave was sought to withdraw the said application. However, a fresh application was filed the same day, along with an application under Order XVIII Rule 1 and 3 CPC asking the defendant to adduce evidence at the first instance.

4.6 By order dated 14th March, 2018, the amendment application as also the application under Order XVIII Rule 1 and 3 were rejected. Aggrieved by the said order a miscellaneous writ petition under Article 227 being M.P.No.1695 of 2018 was preferred by the plaintiff.

4.7. By order dated 21st August, 2019 the High Court *vide* the impugned, allowed the application under Order VI Rule 17 CPC.

5. Hence the present appeal.

6. Order VI Rule 17 CPC, as is well-known, pertains to the amendment of pleadings in a civil suit. It reads as under :-

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

What can be understood from a reading of the above provision is that, **(a)** amendment of pleadings can be allowed at any stage; **(b)** amendment must be necessary to determine the “real question of controversy” “*inter se parties*”; **(c)** if such amendment is sought to be brought after commencement of trial the Court must, in allowing the same come to a conclusion that in spite of best efforts on the part of the party to the suit, the same could not have been brought before the point of time, when it was actually brought.

7. In order to appreciate the plaint as unamended versus the amendment sought to be introduced, we may refer to the same. Para 6A is sought to be inserted after para 6 and certain changes are sought to be made in para 2 and 3 of the suit.

Plaint

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2. That, the father of the plaintiff and defendants late Sh. Gyan Chandra had purchase disputed property through registered sale deed from the seller Babulal, Mahendra Kumar and Prem Kumar S/o late Sh. Ganeshilal Jain and disputed property was received by the mother of the plaintiff from late Sh.Gyan Chandra. Disputed property is recorded in the property tax demand register of Municipal Corporation, Gwalior in the ownership in possession of the mother of the plaintiff Smt. Katoribai W/o late Shj.Gyan Chandra Goel and It was Smt. Katoribai who has been regularly paying house tax of the disputed property during her life time. Smt.Katoribai has died on 5.3.2013. After the death of Smt. Katoribai the plaintiffs and defendants have become owners of the disputed property having equal shares.

3. That, disputed property is ancestral property, in which defendant No.1 and 2 do not sole ownership. Plaintiffs and defendant No.3 and 4 have equal share in aforesaid property and plaintiff and defendants separately have 1/5th shares in disputed property. When the plaintiff has requested defendant No.1 to provide her share in the disputed property then defendant No.1 has got annoyed and refused to give share to the plaintiff in the disputed property.

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6. That, on 17.1.2015, Saturday, the son of the plaintiff named Nilesh has passed from the sides of disputed property during his commercial works, on which he saw that Def. No.1 and 2 Sh. Dinesh Ji and Sh. Sanjay Ji respectively have been showing disputed property to some Yadav with an intention to sell the property. At that time the son of I, the plaintiff has told above person titled Yadav that his mother also has her share in disputed property, on which above person said that disputed property belongs to Def. No.1 and 2 and he is entering into agreement to purchase the same from Def. No.1 and 2 and then the son of I, the plaintiff named Nilesh has returned back to the house and informed the plaintiff about above facts and for this reason it became necessary for the plaintiff to present the instant suit in order to safeguard the rights of the plaintiff.”

The following prayers were sought in the plaint:-

“1. It is declared that plaintiff has 1/5th share in property situated at Gangamai Santar, Murar being house

No.1695/1804, which the plaintiff is entitled to separately receive from the defendants on the basis of metes and bounds.

2. That, disputed property be portioned on the basis of metes and bounds 1/5th share of the plaintiff be provided to her and defendant No.1 be restrained not to sell disputed property without getting it partitioned either by himself or through anybody else, not to create any kind of charge over disputed property.

3. Any other relief, which this Hon'ble Court may deem appropriate in the circumstances of this case be also provided to the plaintiff. Entire suit costs be also provided.”

Amendment

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6A. That, Def.No.1 has made forged signature of Smt. Katoribai on the so-called forged and fabricated will dated 14.01.2013 and has got the same verified from Notary Sh.Govind Bharadwaj Advocate under collusion and similarly, signature of Smt. Indra Mangal and Smt. Babita are not present on the agreements dated 20.12.14 and 28.12.14 and Def. No.1 and 2 have fraudulently made signatures of Smt. Indra Mangal and Smt. Babita Mangal on the above so-called fabricated documents and Def. No.1 Dinesh Goyal @ Pappu, Def. No.2 Sanjay Goyal, Notary Sh. Govind Bharadwaj Advocate and the so-called witnesses namely Siyaram Gupta, Suraj Kushwah and Narendra Gupta have played lead role in getting prepared so-called forged and fabricated will and agreements, in respect of which it is necessary to carry out punitive proceedings against the entire persons as per rules”, by way of amendment.

2. That, the plaintiff after the word “That” in the first line Para No.2 of her suit, wants to mention following contents “immovable” and the plaintiff after the word “disputed” in line No.4 and 8 of the same paragraph, wants to add the word “immovable” by way of amendment. Similarly, plaintiff wants to delete the words “ancestral” as mentioned in the first line of Para No.3 of her suit and to mention the phrase, “belonging to Smt. Katoribai” by way of amendment.”

8. In response to the application dated 16th January, 2018 for amendment, the defendant submitted mainly that:-

- a) the amendment application is unduly delayed, having been brought on 26th October, 2017 when the defendant's response to the suit wherein he sought for the same to be dismissed on the ground that Smt. Katoribai had executed a Will, granting the disputed property solely to the appellant, was filed in July, 2016.
- b) he has denied any forgery or fabrication in respect of Will of Smt. Katoribai, as also the agreement executed with the respondents herein. It is submitted that on the one hand, the respondents herein have questioned the Will itself, while on the other hand, partition is sought to be made of moveable properties as mentioned in the Will.
- c) the application is not based on any subsequent event or incident but rather the plaintiff was already aware of all relevant facts. Further, it is stated that since the amendment is sought to be introduced post the commencement of trial, the same is not maintainable. In support of this contention, reliance is placed on *Vidyabai & Ors. v. Padmalatha & Anr.*⁵

9. The Civil Court by order dated 14th March, 2018 rejected the application observing that proceedings were well on their way. It was observed that the application had been presented nearly a year and three months after the presentation of the Suit, reply to which is dated 25th July 2016. Further, it was observed that the plaintiff had not shown her due diligence, and neither was it based on any subsequent incident.

10. On appeal, the High Court observed that the plaintiff could be denied her share in the property (1/5th as per succession) only when the defendant

⁵ (2009) 2 SCC 409

would be able to establish the genuineness of the Will. It was observed that “*For the reasons best known to the trial court, no issue in regard to the genuineness of the Will has been framed.*” The approach adopted by the civil court was termed ‘hyper-technical’ observing that in order to do complete justice the application should have been allowed “...*specifically when the cross-examination of the plaintiff had not begun...*”. About the second application under Order XVIII Rule 1 and 3 CPC, it was observed that since the application to amend pleadings has been allowed by the Court, liberty was granted to file a fresh application which would then be considered in the light of changed circumstances.

11. At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.

11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In

North Eastern Railway Administration, Gorakhpur v. Bhagwan Das⁶

it was held as under:

“**16.** Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in

⁶ (2008) 8 SCC 511

controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* (1990) 1 SCC 166.]”

11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.*⁷, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-

- (i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.
- (ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.
- (iii) Amendments, while generally should be allowed, the same should be disallowed if –

⁷ 2022 SCC OnLine SC 1128

- (a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.
 - (b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)
 - (c) The amendment completely changes the nature of the suit;
 - (d) The prayer for amendment is *malafide*,
 - (e) By the amendment, the other side should not lose a valid defence.
- (iv) Some general principles to be kept in mind are –
- (I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.
 - (II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.
 - (III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

12. The question that we have to consider, in the above backdrop is whether the High Court fell in error in allowing the application seeking leave to amend pleadings, in contravention of the statutory language.

13. By way of the amendment, what is sought to be done is, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit

to include movable property. It has to be then, demonstrated that – (a) determination of the genuineness of the Will is the necessary course of action in determining the issues *inter se* the parties; and (b) given the finding of the court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement.

14. Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. [See also: *Sanjeev Builders* (supra); *Rakesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd.*⁸; *Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.*⁹; *B.K. Narayana Pillai v. Parmeswaran Pillai & Anr.*¹⁰]

15. In our considered view, the two aspects required to be demonstrated in accordance with the statutory language in the present facts, do not stand on the same footing. The first issue will necessarily have to weigh over the second.

16. The scope of the dispute before us is limited to a procedural aspect. In the larger scheme, this dispute pertains to succession. If there is a Will, it has to be honoured. If one of the parties, who will be affected by the Will coming into effect, challenges it on one ground or the other, the process of succession cannot go forward without determination of the dispute regarding the Will.

⁸ (2012) 5 SCC 337

⁹ (2007) 5 SCC 602

¹⁰ (2000) 1 SCC 712

17. Any and all delays in judicial processes should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The defendant submits that the time gap between submitting the written statement to the Suit and the presentation of the application seeking leave to amend is unexplained. If this argument of the defendant is accepted, the question of Will shall remain undecided or at best will be decided with great delay. The trial which has admittedly already commenced, would be stalled by way of a challenge to the framing of issues which, in turn, would not be in consonance with the object of Order VI Rule 17 of CPC which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute.

18. Keeping in view the above, along with the fact that without determination of the question of Will and its genuineness, the partition of the Suit property would not be possible, we do not find any infirmity in the order of the High Court, allowing the amendment setting aside refusal of the Trial Court to grant such amendment.

19. The amendment is allowed. The appeal is dismissed. The Trial Court shall decide all issues including the genuineness of the Will, expeditiously. It stands clarified that the discussion hereinabove is only in connection with the application under Order VI Rule 17 CPC and no opinion, whatsoever, has been expressed on the merits of the case. The Registry to forward a copy of

this judgment to the Registrar of the High Court who shall ensure its passage thereafter to the concerned Trial Court.

Pending application(s), if any, shall stand disposed of.

.....**J.**
(C.T. RAVIKUMAR)

.....**J.**
(SANJAY KAROL)

September 24, 2024;
New Delhi.