

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11852 of 2014

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Ashok Kumar Singh, Son of Ramayan Singh, Resident of Village Bindwal,
P.S.- Pachrukhi, District- Siwan, at present resident of Village- Rohara
Khurd, P.S. Barharia, District- Siwan

.... Petitioner.

Versus

1. Rajendra Singh
2. Vishwanath Singh
3. Raghav Singh.

Sons of late Harihar Singh, resident of Village- Rohara Khurd, P.S.
Barharia, District- Siwan

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Nagendra Rai, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

6 10-11-2015

Heard Mr. Nagendra Rai, the learned counsel

appearing on behalf of the petitioner and Mr. Ranjeet Kumar, the
learned counsel for the respondents.

Calling in question the legal sustainability of
the impugned order by which the prayer for amendment in the
written statement by the defendant has been declined, the present
application under Article 227 of the Constitution of India has been
filed by the defendant.

The plaintiffs have filed the suit for declaration
of their title over the suit land and further by amendment in the
plaint in the year 2012, the further relief has been added for
declaration that the cancellation deed dated 12.06.1973 executed



by Shama Kuer and the registered sale deed dated 11.07.1973 executed by Shama Kuer in favour of Ramayan Singh are forged, fabricated, inoperative and void documents through which no title or possession over the suit land has been conferred upon the defendant. In short, the plaintiffs' case is that their vendor Shama Kuer had transferable title over the suit property and she, out of legal necessity, had executed two sale deeds in favour of the plaintiffs' predecessor Harihar Singh for the suit land on 11.04.1962 and 24.02.1964. On the basis of those two sale deeds, the plaintiffs have claimed valid title and possession over the suit land. It is also their case that the subsequent cancellation of the two sale deeds by Shama Kuer and execution of the sale deed in favour of the defendant on 11.07.1973 are fraudulent, invalid and void transactions.

The defendants in their written statement have denied the assertions of the plaintiff including the validity of the two sale deeds of the year 1962 and 1964 said to have been executed by Shama Kuer in favour of Harihar Singh (plaintiff's predecessor). The defendant has specifically challenged those two sale deeds of the plaintiff to be forged, fabricated, without consideration and illegal documents. It is also the case of the defendant that Shama Kuer had no knowledge of the two sale

deeds and therefore after getting the knowledge of the same she cancelled those two sale deeds by executing cancellation deed on 12.06.1973 and transferred the suit property in favour of the predecessors of defendants by executing two sale deeds dated 11.07.1973 and 28.06.1973.

The defendant-petitioner filed petition on 24.04.2014 under Order 6 Rule 17 C.P.C. praying for amendment in the written statement seeking to incorporate paragraph-6 (k) in the written statement as mentioned in the amendment petition (Annexure-2). The defendant has come out with the case in the amendment petition that the father of the plaintiffs had got another sale deed dated 08.08.1973, through forgery and fraudulent means, executed by Shama Kuer in his favour with regard to the suit land and, though no title passed on the basis of this sale deed dated 08.08.1973 but the fact of execution of this sale deed amounts to acceptance of the earlier two sale deeds for the suit land in his favour as void and ineffective. The defendant has also pleaded that he has no knowledge of the said sale deed earlier and has produced the same before the court soon after getting the knowledge.

The plaintiffs filed their rejoinder to the amendment petition resisting the prayer of the defendant for

amendment. The plaintiffs in their rejoinder have denied the knowledge of the subsequent sale deed dated 08.08.1973 and have asserted that the amendment is malafide and cannot be allowed at the belated stage of the suit.

By the impugned order, the learned court below has turned down the prayer for amendment on the ground that the plaintiffs' evidence has been closed and the evidence of the defendant is on the verge of closure and the amendment if allowed would prejudice the case of the plaintiffs as they would not get opportunity for rebuttal evidence.

After considering the submissions on behalf of the parties and the pleadings in the suit as annexed in the writ application, it is manifest that the crucial issue in the suit is the validity of the two sale deeds of the year 1962 and 1964 said to have been executed by Shama Kuer in favour of the plaintiffs for the suit land. Those two sale deeds are the basis of the claim of the plaintiffs in the suit. The defendant has specifically denied the legality and validity of those sale deeds in the averments made in the written statement. By amendment the defendant seeks to add another fact regarding the subsequent sale deed dated 08.08.1973 which is said to have been executed by the same vendor Shama Kuer in favour of the plaintiffs' predecessor for the suit land.



Though the defendant has assailed this sale deed also to be void and illegal but according to the learned counsel for the petitioner, the fact regarding this sale deed is sought to be incorporated in the written statement only by way of additional defence for the purpose of dislodging the validity of the earlier two sale deeds of the year 1962 and 1964 which are the main plank of the claim of the title of the plaintiffs over the suit land. The learned counsel for the petitioner has also submitted by referring to Annexure-6 (annexed with the supplementary affidavit) that by petition dated 26.03.2014 the defendant has made prayer for adducing the sale deed dated 08.08.1973 in evidence and the said petition is still pending.

The learned counsel for the plaintiff-respondents, in his turn, has submitted that the learned court below has rightly refused the prayer for amendment, as the same has been belatedly made and could not have been allowed in view of the proviso to Order 6 Rule 17 C.P.C. It has been canvassed that the defendant had the knowledge of the said sale deed from much before and therefore allowing the prayer for amendment at the belated stage when the plaintiffs have completed their evidence, would seriously prejudice the case of the plaintiffs. It has also been submitted that even allowing the prayer of the defendant to

adduce the said sale deed dated 08.08.1973 in evidence would again prejudice the case of the plaintiffs.

It is evident that the specific challenge to the two sale deeds of the plaintiffs has already been made by the defendant in his written statement. By seeking to incorporate the fact regarding the sale deed dated 08.08.1973 which is subsequent to the two sale deeds of the year 1962 and 1964, the defendant wants to introduce additional ground for challenge to the two sale deeds whose validity is the crucial issue in the suit. A far more liberal approach is to be adopted while considering the amendment in the written statement as distinguished from the amendment in the plaint. The apex court in the case of ***Sushil Kumar Jain V. Manoj Kumar***, A.I.R. 2009 S.C. 2544, has ruled as follows.

10. “....At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action...”

11. “.... It is equally well settled that in the case of

an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed...”

Moreover, from the conspectus of the provision of Order 6 Rule 17 C.P.C. it is apparent that the emphasis is on the trial of the lis on merits and for the said purpose the amendment in the pleadings has been permitted for determining the real questions in controversy between the parties. It would be worthwhile here to note the observations of their lordships in ***Rajesh Kumar Aggarwal Vs. K.K.Modi*** , (2006) 4 SCC 385 in this regard as follows:

15. “....*The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side...*”

16. “....Order 6 Rule 17 consists of two parts. Whereas 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 amendment’s which are necessary for the purpose of determining the real question in controversy between the parties...”

18. “... As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed, if it is not, the amendment will be refused. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court...”

(Emphasis supplied)

In the context of the present controversy it would be fruitful here to take into notice the observations of the apex court in the case of *State of Maharashtra Vs. Hindustan*

Construction Company Limited, (2010)4 SCC 518 where their lordships have approvingly quoted the observations in the case of *Jai Jai Ram Manohar Lal Vs. National Building Material Supply, (1969) 1 SCC 869* as follows:

22. “... In *Jai Jai Ram Manohar Lal* this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendments could not take effect retrospectively and on the date of the amendments the action was barred by the law of limitation. It was held :

“5....Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to this opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be

allowed if it can be made without injustice to the other side.”

Their lordships have further observed:

“7. ... The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.”

Their lordships in ***Hindustan Construction Company Limited (Supra)*** have also noticed the observations in the case of ***Clarapede & C. V. Commercial Union Assn., (1883) 32 WR 262 (CA)*** as follows:

“.... The rule of conduct of the court in such a case is that, however, negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made...”

In the context of an application for amendment under Order 6 Rule 17 C.P.C. the apex court in ***Prem Bakshi Vs.***



Dharam Dev, (2002) 2 SCC 2 have observed that it is almost inconceivable as to how mere amendment of pleadings could possibly cause failure of justice or irreparable injury to any party and accordingly a situation cannot be envisaged where amendment of pleadings, whatever be the nature of such an amendment, would even remotely cause failure of justice or irreparable loss to any party. Recently in the case of ***Ram Niranjana Kajaria Vs. Shiv Prakash Kajaria*** ,(2015) 10 SCALE 98 it has been ruled as follows:

23. “.... Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position...”

Considering the aforesaid authoritative pronouncements reflecting upon the facets of amendment in the pleading as envisaged under Order 6 Rule 17 C.P.C. it is vivid that the fact relating to the subsequent sale deed in favour of the predecessor of the plaintiff by the same vendor for the same suit land, in presence of the earlier two sale deeds of the year 1962 and 1964 , is a relevant consideration while determining the seminal issue of the legality and validity of those two sale deeds of the



year 1962 and 1964 which are the basis of the claim of the plaintiffs in the suit . It is also significant to take into notice that the plaintiff-respondents in their rejoinder to the amendment petition have not stated that the defendant had the knowledge of the sale deed dated 08.08.1973 from before, though, the leaned counsel appearing for the plaintiff-respondents has pointed out on the basis of the copy of the sale deed dated 08.08.1973, annexed by the petitioner in their supplementary affidavit that the said copy has been obtained in the year 2008 as mentioned therein, and therefore, the proposed amendment would be bared under the proviso to Order 6 Rule 17 C.P.C. This Court , however, has not been persuaded to align with the submission on behalf of the respondents that in the facts and circumstances of the case , the delay in seeking the amendment at the later stage of the trial can be the sole ground for rejection of the prayer for amendment. The scope and ambit of the proviso to Order 6 Rule 17 C.P.C. has come up for consideration before the apex court in the case of ***Chander Kanta Bansal Vs.Rajinder Singh , AIR 2008 SC 2234*** and their lordships have ruled as follows:

“.... The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if



it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment...”

For the aforesaid reasons and discussions, this Court is of the view that the rejection of the proposed amendment in the written statement by the defendant seeking to incorporate additional ground for assailing the basis of the claim of the plaintiffs in the suit would lead to injustice while allowing the amendment would cause no prejudice to the plaintiffs which cannot be compensated by way of cost. The writ application is, accordingly, allowed and the impugned order is quashed. The prayer of the defendant for amendment in the written statement as

made in the petition dated 24.04.2014 is allowed subject to payment of cost of Rs. 10,000/- by the defendant to the plaintiffs. The defendant must deposit the cost in the court below within two weeks from the date of receipt/ production of a copy of this order and the plaintiffs thereafter shall be entitled to withdraw the same. The plaintiffs and the defendant shall be entitled to lead their respective evidence in view of the amendment so made in the written statement. The learned court below is directed to proceed in accordance with law for expeditious disposal of the suit.

The writ application is accordingly allowed with aforesaid directions.

(V. Nath, J)

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