

08.12.2020.

Item No. 4

**S.A. 462 of 2009
with
C.A.N. 1 of 2009
(Old No. CAN 10230 of 2009)**

Anwara Khatun and others.

Vs.

Liza Chowdhury and others.

Mr. Soumik Ganguly.

... for the plaintiffs/appellants.

Both the Courts have concurrently held that the plaintiffs/appellants are not entitled to mere declaration of their right, title and interest over the subject property in absence of any ancillary and/or consequential relief having prayed therein. In other words, both the Courts have uniformly held that the suit is hit by the provisions of Section 34 of the Specific Relief Act, 1963.

Shorn of unnecessary details, one Nurul Islam took a Life Insurance Term Policy of the Life Insurance Corporation of India and nominated his wife in the nomination column to be entitled to receive the amount of maturity or in case of death, the accrued amount. Unfortunately the said holder of the policy died on 30th September 1999 and the plaintiffs/appellants being the sharers under the Hanafi Law demanded the assured sum in the proportion to their share held under the said law. The Life Insurance Corporation of India took a stand that since the widow of the holder of the policy has been nominated to receive the money as nominee, it is a statutory obligation cast upon them to disburse the said amount to the said nominee. In fact, the amount

has been disbursed to the said nominee and the present suit was filed simplicitor for declaration of their right, title and interest of the said amount and entitlement to receive the same.

It is no doubt true that Section 39 of the Life Insurance Corporation Act mandates the payment of matured or assured sum to the nominee who may hold the same in trust for the successor and/or inheritors under the relevant Succession Act. In other words, it has been held consistently that by virtue of a nomination the third line of succession has not been created but the nominee simply acts as a custodian of the said amount or holding the said money in trust for and behalf of the successors of the deceased under the relevant Succession law.

There is no impediment or fetter on the part of the heirs of the successors of the deceased to claim the said amount in proportion to the share acquired under the relevant Succession law from the nominee and, in fact, a suit has been filed by the plaintiffs/appellants to achieve the owed object but without any consequential prayer.

Section 34 of the Specific Relief Act, 1963 ordains that any person entitled to any legal character or a right in any property may institute a suit against the person denying or interested or deny such legal character or right that he so entitled. However, the proviso appended thereto puts an embargo on the Court to make such declaration when a further relief or a consequential relief flowing from such declaration has not been prayed for.

We are not unoblivion of the proposition of law that if the defects are not fatal but irregular in nature, the Court may permit the party to rectify such defects either by way of amendment or otherwise. The relief, which is ancillary to or

consequential to or in furtherance of the main relief, if not sought for, may be permitted by the Court to be brought by way of amendment provided such relief is not otherwise barred by way of limitation.

It is somewhat settled that the Court must adopt a liberal approach in dealing with the application for amendment of the pleadings but the same is circumscribed with restrictions upon introduction of the proviso appended to Order VI rule 17 of the Code of Civil Procedure in the year 2002.

It admits no ambiguity that the relief, which is apparently bared by limitation, cannot be permitted to be brought in the pleadings by way of amendment as it would be a futile exercise to hover around the said issue as the result to be achieved is apparent and certain. The aforesaid proposition is not static but depends upon the facts of each case. In case, where the Court finds that the question of limitation is debatable one and largely depends upon the evidence to be brought in this regard, the Court may permit the amendment keeping the point of limitation open.

We do not find that the plaintiffs/appellants being oblivion of the embargo under the proviso appended to Section 34 of the Specific Relief Act, 1963 did not take any steps to amend the pleadings and it is too late to grant any leave of such nature as the limitation has intervened and such further or consequential relief cannot be granted at this juncture.

We, thus, do not find any infirmities and/or errors in the concurrent findings of fact recorded by both the Courts below that the suit filed by the plaintiffs/appellants is hit by Section 34 of the Specific Relief Act, 1963.

The instant appeal does not involve any substantial questions of law and the same is hereby dismissed.

In view of dismissal of the appeal itself, the connected application has become infructuous and the same is also dismissed.

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(Harish Tandon, J.)

(Kausik Chanda, J.)