HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 77/2020

1. Surendra Kumar S/o Late Shri Munna Lal Lodha, Aged About 64 Years, Resident Of 44, Sojatiya Bass, Pali - Marwar.
2. Vimala Devi D/o Shri Surendra Kumar Lodha, Aged About 62 Years, B/c Jain, Resident Of 44, Sojatiya Bass, Pali, Marwar (Raj.).
3. Hemant Kumar S/o Shri Surendra Kumar Lodha, Aged About 40 Years, B/c Jain, Resident Of 44, Sojatiya Bass, Pali, Marwar (Raj.).
4. Anil Kumar S/o Shri Surendra Kumar Lodha, Aged About 38 Years, B/c Jain, Resident Of 44, Sojatiya Bass, Pali, Marwar (Raj.).
5. Manish Kumar S/o Shri Surendra Kumar Lodha, Aged About 33 Years, B/c Jain, Resident Of 44, Sojatiya Bass, Pali, Marwar (Raj.).

----Petitioners

Versus

1. Phulwanti Devi W/o Late Shri Jawahar Lal Lodha, B/c Jain, Resident Of Sojatiya Bass, Pali, Pali (Expired).
2. Dalpat Singh S/o Shri Jeevaraj Singh, B/c Rajpurohit, R/o Dhabbar, At Present 140, Aadarsh Nagar Extension, Pali.
3. Surendra Singh S/o Shri Jeevraj Singh, B/c Rajpurohit, R/o Dhabbar, At Present 140, Aadarsh Nagar Extension, Pali.
4. State Of Rajasthan, Through The District Collector, Pali.
5. Sub Registrar Office, Pali Marwar.
6. Roshan Bano D/o Shri Kalu Khan, B/c Goshi Musalman, R/o Goshiwada, Keriya Darwaza, Pali.
7. Madhu Devi W/o Shri Mohanlal, B/c Paliwal Brahmin, R/o 374, Aanand Nagar, Part -B, Mandiya Road, Pali.
8. Chandrakanta Gautam D/o Shri Sohan Lal Gautam, B/c Brahmin, Resident Of 77 Himmat Nagar, Pali.
9. Aabida Bano W/o Tayab Ali Ansari, Bc Muslim, R/o 36-48 Nadi Mohalla Pali At Present Residing At House No. 96, Kamla Nehru Nagar- 1, Opposite Bijli Ghar Jodhpur.
10. Suresh Kumar S/o Late Shri Munna Lal Lodha, B/c Jain, R/o 44, Sojatiya Bass, Pali- Marwar.

11. Savita Devi W/o Shri Suresh Kumar Lodha, B/c Jain, R/o 44 Sojatiya Bass, Pali- Marwar.
12. Rakhi Kumar D/o Shri Suresh Kumar Lodha, Minor Through Her Natural Guardian Father Shri Suresh Kumar S/o Late Shri Munna Lal Lodha, B/c Jain, Resident Of 44, Sojatiya Bass, Pali - Marwar.

----Respondents

S.B. Civil Writ Petition No. 1047/2020

1. Suresh Kumar S/o Late Shri Munna Lal Lodha, Aged About 59 Years, By Caste Jain, Resident Of 44, Sojatiya Bass, Pali-Marwar, Tehsil And District Pali (Raj.).
2. Savita Devi W/o Shri Suresh Kumar Lodha, Aged About 44 Years, By Caste Jain, Resident Of 44, Sojatiya Bass, Pali-Marwar (Raj.).
3. Rakhi Kumari, Aged About 16 Years, Minor Through Her Natural Guardian Father Suresh Kumar Son Of Late Shri Munna Lal Lodha, B/c Jain , R/o 44 Sojatiya Bass, Pali - Marwar (Raj.).

----Petitioners

Versus

1. Phulwanti Devi W/o Late Shri Jawahr Lal Lodha, By Caste Jain, Resident Of Sojatiya Bass, Pali (Raj.) (Expired).
2. Dalpat Singh S/o Shri Jeevraj Singh, Aged About 54 Years, B/c Rajpurohit, R/o Dhabbar, At Present 140, Aadarsh Nagar Extension, Pali (Raj.).
3. Surendra Singh S/o Shri Jeevraj Singh, Aged About 52 Years, B/c Rajpurohit, R/o Dhabbar, At Present 140, Aadarsh Nagar Extension, Pali (Raj.).
4. State Of Rajasthan, Through The District Collector, Pali (Raj.).
5. Sub-Registrar Office, Pali - Marwar (Raj.).
6. Roshan Bano D/o Shri Kalu Khan, Aged About 46 Years, B/c Goshi Musalman, Resident Of Goshiwada Keriya Darwaza Pali (Raj.).
7. Madhu Devi W/o Shri Mohanlal, Aged About 46 Years, B/c Paliwal Brahmin, R/o 374, Aanand Nagar Part-B, Mandiya Road, Pali (Raj.).

8. Chandrakanta Gautam W/o Shri Sohan Lal Gautam, Aged About 49 Years, B/c Brahmin, R/o 77 Himmat Nagar, Pali (Raj.).
9. Aabida Bano W/o Tayab Ali, Aged About 52 Years, B/c Muslim, At Present R/o 96 Kamla Nagar - 1St, In Front Of Powerhouse Gate, Jodhpur (Raj.).
10. Surendra Kumar S/o Late Shri Munna Lal Lodha, Aged About 64 Years, B/c Jain, R/o 44, Sojatiya Bass, Pali Marwar, Tehsil And District Pali (Raj.).
11. Vimala Devi W/o Shri Surendra Kumar Lodha, Aged About 62 Years, B/c Jain, R/o 44, Sojatiya Bass, Pali Marwar, Tehsil And District Pali (Raj.).
12. Hemant Kumar S/o Shri Surendra Kumar Lodha, Aged About 40 Years, B/c Jain, R/o 44, Sojatiya Bass, Pali Marwar, Tehsil And District Pali (Raj.).
13. Anil Kumar S/o Shri Surendra Kumar Lodha, Aged About 38 Years, B/c Jain, R/o 44, Sojatiya Bass, Pali Marwar, Tehsil And District Pali (Raj.).
14. Manish Kumar S/o Shri Surendra Kumar Lodha, Aged About 33 Years, B/c Jain, R/o 44, Sojatiya Bass, Pali Marwar, Tehsil And District Pali (Raj.).

----Respondents

For Petitioner(s)	:	Mr. B.S. Sandhu. Mr. Narpat Singh.
For Respondent(s)	:	Mr. Vikas Balia. Mr. Anirudh Purohit.

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

18/03/2020

These writ petitions are directed against order dated 19.11.2019 passed by Additional District Judge, Pali, whereby, the application filed by the plaintiffs under Order I Rule 10(2), Order VI Rule 17 and Order XXII Rule 10 CPC read with Section 151 CPC, has been rejected.

A suit for declaration, cancellation of sale deed and permanent injunction was filed by the petitioners – plaintiffs in the

year 2001. The suit was filed *inter alia* with the submissions that the plaintiffs and defendant No.1 Smt. Phoolwanti Devi were legal representatives of Lt. Sh. Munna Lal. The family tree was indicated in Para-1 of the plaint, wherein, it was indicated that defendant No.1 Smt. Phoolwanti Devi was wife of Lt. Sh. Jawahar Lal S/o of Munna Lal and that the plaintiffs – Surendra Lodha and Suresh Lodha are sons of Lt. Sh. Munna Lal.

It was claimed that the property in question was joint and had not been subjected to partition. Certain properties were purchased by Munna Lal Ji in the name of Lt. Sh. Jawahar Lal and other members of the Family, which belong to the joint family. The list of properties were indicated in Para-4 of the plaint. Specific reference was made to land comprising in Khasra No.7/18, which was claimed as joint property though standing in the name of Jawahar Lal. Allegations were made that the nature of defendant No.1 has been non-cooperative and with a view to harm the family, she got the mutation in her name, regarding which, the plaintiffs had no information though they continued to be in possession of the land in question. Whereafter the land in question was transferred to defendants No.2 and 3. Averments were made that plaintiffs were entitled to get the transfer deeds cancelled for the reasons indicated in the plaint.

Thereafter further averments were introduced by way of amendment that during pendency of the suit further properties have been transferred in favour of defendants No.6 to 8, which would be governed by the principle of lis pendens. Ultimately, it was prayed that declaration be given regarding the jointness of the property, shares be declared, sale deeds be cancelled and

injunction be granted. Whereafter on 6.2.2006, injunction was granted by the trial court restraining the defendants from transferring the property.

Defendant No.1 Smt. Phoolwanti Devi died in the year 2015. Whereafter an application under Order VI Rule 17 CPC read with Order I Rule 10 CPC was filed by the plaintiffs No.1 to 3 seeking amendment in the plaint. Another application was filed by plaintiffs No.4 to 8 also seeking amendment in the plaint.

The applications came to be rejected by order dated 4.7.2019 *inter alia* observing that the plaintiffs have not indicated in the application as to in which paragraphs the amendment was being sought and which sale deeds were sought to be cancelled and that the suit is pending since the year 2001, issues were framed in the year 2004, affidavit of the plaintiff was filed in the year 2007 and the cross-examination took place in the year 2008. However, despite passage of sufficiently long time, the amendment was not sought and, therefore, the application was rejected.

Feeling aggrieved, the plaintiffs petitioners filed S.B. Civil Writ Petition No.10776/2019, which was dismissed by this Court by order dated 22.7.2019.

Whereafter another application under Order I Rule 10(2), Order VI Rule 17 and Order XXII Rule 10 CPC came to be filed, wherein, amendments were sought in Para-4(1)(2)(4). Prayer was made to add 11 more defendants as defendant No.10 to 20 and the sale deeds executed in their favour indicated in proposed amendment in Para-13(i)(ii) and 13(xii) were sought to be set aside.

Another application was filed by plaintiff No.6 seeking amendments, which were similar to the amendments sought by co-plaintiffs besides setting up a Will by Late Jawahar Lal in his favour.

The trial court by its order dated 19.11.2019 rejected the application on the ground of delay and that the transfers during the pendency of the suit would be governed by principle of lis pendens.

It is submitted by learned counsel for the petitioners in SBCWP No.77/2020 that the trial court committed error in dismissing the application filed by the petitioners seeking amendment. Submissions were made that the applications were filed based on subsequent events and as the defendant No.1 had died during pendency of the suit, the transferees from her were required to be brought on record under provisions of Order XXII Rule 10 CPC.

Further submissions were made that law in this regard is very clear, wherein, the Hon'ble Supreme Court has laid down that the amendments must be liberally permitted and, therefore, the order impugned deserves to be quashed and set aside.

Reliance was placed on judgments in *Rajesh Kumar Agarwal & Ors. V. K.K. Modi & Ors.: (2006) 4 SCC 385*, *Thomson Press (India) Ltd. V. Nanak Builders & Investors : (2013) 5 SCC 397* and *Vineet Kumar v. Mangal Sain Wadhera : AIR 1985 SC 817*.

Learned counsel appearing for the respondents vehemently opposed the submissions. It was submitted that the order impugned passed by the trial court does not call for any interference. It was emphasized that the application is highly

belated, earlier two applications were filed by two sets of plaintiffs, both the applications were dismissed, which was challenged before the High Court, which upheld the dismissal on merits and, therefore, filing of the fresh application by changing the form, cannot be sustained.

Further submissions were made that in the two separate applications filed by two sets of plaintiffs, mutually contradictory pleas have been taken wherein, the plaintiffs No.4 to 8 have relied on the Will of Jawahar Lal and have claimed title independent of plaintiffs No.1 to 3 and have filed a separate writ petition. It was submitted that the application was rightly rejected on account of delay, *res judicata* and the fact that the averments made in the application would change the nature of the suit.

Further submissions were made that nowhere in the application, the delay has been explained. The transfer deeds sought to be challenged are even prior to filing of the suit and the challenge laid is ex-facie barred by limitation and, therefore, the trial court was justified in rejecting the application, and the writ petitions also, therefore, deserve dismissal.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

When the earlier applications were filed on 15.9.2018, the same came to be rejected by the trial court by its order dated 4.7.2019. While rejecting the application the trial court *inter alia* observed as under:-

> ''दोनों पक्षों को सुना गया। विस्तृत रूप से उक्त प्रार्थना पत्र व जवाब एवं पत्रावली का गहनता से अवलोकन किया गया। वादी ने दौराने दावा प्रतिवादीगण द्वारा अन्य लोगों के साथ मिलकर संयुक्त परिवार की सम्पति को भिन्न भिन्न समय में बेचान किये गये है और उक्त बेचान के निरस्तीकरण के संबंध में संशोधन वादीगण द्वारा चाहा गया है। वादीगण

ने अपने प्रार्थना पत्र में स्पष्ट रूप से यह कहीं भी वर्णित नहीं किया है कि वाद पत्र के कौन कौन से पद में संशोधन चाहा गया है और स्पष्ट रूप से कौन कौनसे बेचाननामों के निरस्तीकरण बाबत संशोधन अनुतोष के किस मद में जोड़े जाने की आवश्यकता है इस संबंध में भी किसी प्रकार का कोई स्पष्ट कथन नहीं किया है, न ही कोई प्रारूप इस संबंध में प्रार्थना पत्र के साथ पेश किया है। दौराने दावा प्रतिवादीगण द्वारा अन्य लोगों के साथ किये गये बेचान के संबंध में न्यायालय में अवमानना याचिका भी लम्बित होना बताया गया हैं उक्त संबंध में यहां पर यह भी उल्लेख किया जाना उचित है कि प्रस्तुत वाद लगभग 18 वर्षों से अधिक समय से वर्ष 2001 से लम्बित हैं मामले में दोनों पक्षों के अभिवचनों के आधार पर दिनांक 21–12–2004 को विवाद्यक तय किये जा चुके हैं। दिनांक 13–07–2007 को वादी का शपथ पत्र भी पेश किया जा चुका है और सन 2008 में जिरह भी पूर्ण हो चुकी है। वादी को कई अवसर मौजूद थे। वादी को दावा प्रस्तुती के बाद से विवादित बेचाननमे जिनको निरस्तीकरण के संबंध में प्रार्थना पत्र के जरिये निवेदन किया गया है, उनके निष्पादित होने के बाद काफी लम्बा समय वादी के पास मौजूदा था। प्रकरण वर्तमान में निरीक्षण पत्रावली में शामिल है अतः शीघ्र निस्तारण किया जाना आवश्यक हैं वादी द्वारा प्रस्तुत प्रार्थना पत्र में वाद पत्र में किस मद में किस पेज पर किस पंक्ति पर क्या संशोधन चाहा गया है इस संबंध में कोई स्पष्ट कथन नहीं किया गया है। काफी अर्से के पश्चात प्रार्थना पत्र मात्र मामले में देरी किये जाने हेतु प्रस्तुत किया जाना प्रतीत होता है। अतः उक्त तथ्यों परिस्थितियों एवं उक्त विवेचन के आधार पर प्रार्थी का प्रार्थना पत्र स्वीकार किये जाने योग्य नहीं पाया जाता है। अतः प्रार्थी का प्रार्थना पत्र खारिज किया जाता है।''

A perusal of the above determination would reveal that the trial court came to the conclusion that it was not indicated in the application as to which paragraphs were sought to be amended, which sale deeds were sought to be cancelled and regarding the same, which paragraphs needs to be amended. The reference to framing of issues and leading of the evidence were also noticed and on account of the delay, the applications were rejected.

In the writ petition filed by five plaintiffs, a Coordinate Bench of this Court while dismissing the writ petition *inter alia* observed as under:-

> "I have heard learned counsel for the petitioners and perused the material available on record.
>
> Indisputedly, the suit in question had been filed way back in the year 2001 and it has proceeded at a snail's pace to reach at the stage of plaintiffs' evidence.

> By way of the present amendment application, the petitioners have tried to get quashment of various sale-deeds, executed in the year 2004, 2007, 2008 etc. The petitioners have raised omnibus allegations and have not made specific prayer that in which part of the plaint they wanted amendment and which facts inserted.
>
> It is to be noticed that the petitioners had filed a composite application under Order VI Rule 17 and Order I Rule 10 of the Code, without separately mentioning the names of the parties they wanted to implead. The petitioners' application under consideration was bereft of merit and the same has rightly been rejected by the Trial Court.
>
> That apart, if the amendment, as prayed by the petitioners' is allowed, it would require impleadment of various parties, service of notice upon them and production of various documents, which would expand the suit to an unmanageable extent and the suit, as framed originally, would lose its basic character and frame.
>
> This Court does not find any error of jurisdiction or infirmity in the impugned order dated 04.07.2019 passed by the Trial Court, for which, the writ petition is dismissed.
>
> The Stay Application No.10687/2019 also stands dismissed."
>
> (emphasis supplied)

A perusal of the above order would reveal that the court noticed the fact that the suit having been filed in the year 2001, that the sale deeds of the year 2004, 2007 & 2008 were sought to be cancelled based on omnibus allegations and that the impleadment of various parties and production of documents would expand the suit to an unmanageable extent and the suit as framed would lose its basic character and frame and based on the above observations rejected the writ petition.

The subsequent applications filed with the identical facts only the form was changed by indicating the amendment sought in various paragraphs and challenging sale deeds dated 27.6.2007, 16.5.2008, 13.1.2006, 7.4.2006, 4.6.2010 and 6.5.2013. In several paragraphs sought to be introduced the dates of the sale deeds have not been indicated. A wholly cursory and vague, one line averment has been made that the transfers have taken place, which came to the notice of the plaintiffs now. As to which event led to the petitioners coming to know of the transfers has not been indicated anywhere.

The averments, which have been made in the application are also most obnoxious, the example whereof, reads as under:-

> ''वादीगण की सम्पत्तियो का आधिपत्य हक हकुक अधिकार भु–तस्करो द्वारा हड़पने, छिनने के प्रयासों के तहत अनेकों कुटरचित विक्रय विलेख (रजिस्ट्रीया) बनावटी, जाली भु–तस्करो प्रतिवादीगण/अप्रार्थीगणो द्वारा कुटरचित बनावटी तैयार कर वादीगण की सम्पत्तिया हड़पने हेतु रचित किये गये लेकिन वादीगण इन भु–माफियाओ के मंसुबे सफल नही होने देगे। वादीगण को न्याय देरी से भी मिलेगा पर मिलेगा न्याय, प्रतिवादीगण/अप्रार्थीगण भु माफिया जो कानुन के साथ जो स्थाई निषेधाज्ञा होने बाद जो कबड्डी का खेल खेलकर, कबड्डीया खेल रहे हैं उसका पर्दाफाश एक दिन जरूर अवश्य माननीय न्यायालय करेगा।''

Interestingly, in the application filed by plaintiff No.6 seeking amendment, a plea contrary to the interest of plaintiffs No.1 to 5 regarding a Will dated 28.12.1993 allegedly executed by Jawahar Lal in favour of the plaintiff No.6 were also sought to be introduced. However, during course of submissions, learned counsel appearing for the plaintiff – Suresh Kumar submitted that plaintiff No.6 has for the time being abandoned his plea based on the Will in the present suit.

The above aspects, clearly reflect that the application filed by the petitioners seeking similar amendments stood rejected by the trial court by its order dated 4.7.2019 and a Coordinate Bench of this Court while rejecting the writ petition, upheld the rejection of applications by indicating additional reasons i.e. the ground of delay in seeking to challenge the sale deeds of the year 2004, 2007 and 2008 and that the amendment, if permitted, would change the character and frame of the suit.

The said dismissal of application by the trial court and upheld by this Court on merits, would operate as *res judicata* as it has been laid down by Hon'ble Supreme Court in *Arjun Singh v. Mohinder Kumar : AIR 1964 SC 993* that the *res judicata* applies in different stages of the same proceeding.

Besides the above, in view of the fact that petitioners have not indicated any reason, whatsoever, for seeking amendment for challenging the transfer deeds, which were executed way back in the year 2006, 2007, 2008, 2010 and 2013, the lack of due diligence is writ large on record and, therefore, the rejection of the application by the trial court does not call for any interference under Article 227 of the Constitution of India.

Further, insofar as, the plaintiff No.6 is concerned, the rejection of earlier application was not questioned by him and he has again filed the application by taking a plea, which is contrary to the interest of the plaintiffs No.1 to 5, the said action, wherein, the two sets of plaintiffs were seeking to take stand contrary to each other, itself is sufficient to reject the application seeking amendment in the plaint.

So far as the reliance placed on judgment in Rajesh Kumar Agarwal (supra) is concerned, the principles laid down have been to be applied in the context and in view of what has been discussed hereinbefore, same would have no application to the present situation.

The plea raised based on provisions of Order XXII Rule 10 CPC by relying on the judgment in the case of Thomson Press (India) (supra) also has no basis, inasmuch as, the defendant No.1 Smt. Phoolwanti expired in the year 2015 and all the alleged transfers took place during her life time and, therefore, the application under Order XXII Rule 10 CPC, which could have been filed at the relevant time i.e. at the time of respective transfers, by relying on event of death of Smt. Phoolwanti Devi, which aspect has no relevance to an application under the said provision, cannot be countenanced.

Further the trial court has already observed that the principles of lis pendens would apply and, therefore, attempt made on part of petitioners seeking amendment in the plaint so as to put back the clock before the year 2004, when the issues were framed i.e. 15 years, cannot be permitted.

Consequently, the writ petitions filed by the petitioners have no substance. The same are, therefore, rejected.

The trial court is directed to proceed with the suit with utmost expedition.

(ARUN BHANSALI),J

Sumit/-