SUPREME COURT OF INDIA

Baldev Singh and Others Etc

Vs

Manohar Singh and Another Etc

Appeal (Civil) 3362 of 2006 (Arising Out of Slp) Nos.12719-12720/2005)

(Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ)

03.08.2006

JUDGMENT

TARUN CHATTERJEE, J.

Leave granted.

An order rejecting an application for amendment of a written statement passed by the Additional Civil Judge (Senior Division), Nawanshahar, Punjab and Haryana and affirmed by a learned Judge of the Punjab and Haryana High Court, is now under challenge before this Court by way of a Special Leave Petition under Article 136 of the Constitution of India filed at the instance of the defendants/ appellants excepting the Respondent No.2 herein.

A suit has been filed by the plaintiff/respondent No.1 (Manohar Singh) for a declaration that he is the owner and in possession of 40 Kanals and 15 Merlas comprised in Kh. No. 16(8-0), 17(8-0), 19(8-0), 20/1(7-4), 25/1(1-11) of rect No.19 of Khewat No.212 Khatauni No. 263 as fully described to the schedule of the plaint. (hereinafter referred to as "the suit property").

The case set up by the plaintiff/respondent No.1 was that the sale deeds executed on 24.6.1968 and 25.6.1968 in the names of his parents were benami transactions and the plaintiff/respondent No.1 was the real owner of the same as his parents had no money to pay the consideration money of the

suit property and that the sale deeds were executed pursuant to an oral agreement to sell which was entered into only by the plaintiff/respondent No.1. The appellants entered appearance and filed their written statement, inter alia, denying that there was any agreement to sell the suit property or that the suit property was owned and possessed by the plaintiff/respondent No.1. It has also been pleaded in the written statement that the defendant No.1/appellant No.1 is the actual owner and in possession of the suit property because he was residing in India continuously in village Bhin without any interruption from any one whereas the plaintiff is residing permanently in Canada. During the pendency of the suit, an application for amendment of the written statement was filed by the appellants seeking its amendment in which it was alleged that the suit was barred by limitation and that the plaintiff/respondent No.1 had no money to pay the sale price of the suit property, and that the father of the parties, who was serving as a Foreman in the Central Government and their mother had sufficient income to pay the sale price of the suit property and on the death of their parents the names of the plaintiff and the defendants have been mutated in equal shares in respect of the suit property. Accordingly, the defendants/appellants sought for amendment of the written statement in the manner indicated herein earlier. It was further pleaded in the application for amendment of the written statement that the amendment sought for was in fact an elaboration of the case made out in the written statement. The High Court as well as the Trial Court rejected the application for amendment of the written statement.

Feeling aggrieved by and dissatisfied with the order rejecting the application for amendment of the written statement, this Special Leave Petition has been filed which, on grant of leave, was heard in presence of the learned counsel for the parties.

We have heard the learned counsel for the parties in detail on the question whether the amendment sought for in the written statement, in the facts and circumstances of the present case, ought to have been allowed or not.

Before we take up this question for our decision, we must consider some of the principles to be governed for allowing an amendment of the pleadings.

It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung 1922 AIR(PC) 249 in which the Privy Council observed:

"All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6 Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that 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. A bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pladings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously. By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. So far as proviso to Order 6 Rule 17 of the Code of Civil Procedure is concerned, we shall deal with it later.

Keeping these principles in our mind, let us now consider whether the High Court as well as the Trial Court had erred in rejecting the application for amendment of the written statement filed by the appellants.

A bare perusal of the order rejecting the application for amendment of the written statement indicates that while rejecting the application for amendment of the written statement, the High Court as well as the trial court based their decisions mainly on three grounds. The first ground was that since the appellants had made certain admissions in the written statement, its amendment cannot be allowed permitting the appellants to withdraw their admission made in the same. Secondly, the question of limitation cannot be allowed to be raised by way of an amendment of the written statement and lastly inconsistent pleas in the written statement cannot also be allowed to be raised by seeking its amendment.

So far as the second ground for rejection of the amendment of the written statement is concerned, we do not like to delve in detail in view of the decision of this Court in the case of Ragu Thilak D.John vs. S.Rayappan and Others 31. In para 6, this Court observed:

"If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment

prayed for." $ (Emphasis supplied)

In view of this decision, it can be said that the plea of limitation can be allowed to be raised as an additional defence by the appellants. Accordingly, we do not find any reason as to why amendment of the written statement introducing an additional plea of limitation could not be allowed. The next question is that if such amendment is allowed, certain admissions made would be allowed to be taken away which are not permissible in law. We have already examined the statements made in the written statement as well as the amendment sought for in the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement in depth, we do not find any such admission of the appellants which was sought to be withdrawn by way of amending the written statement.

As noted herein earlier, the case set up by the plaintiff/respondent No.1 was that his parents had no money to purchase the suit property and it was the plaintiff/respondent No.1 who paid the consideration money. In the written statement, this fact was denied and further it was asserted in the written statement that the suit property was in fact purchased by their parents and they had sufficient income of their own. In the application for amendment of written statement it was stated that the plaintiff/respondent No.1 did not have any income to pay the consideration money of the suit property and in fact the parents of the plaintiff/respondent No.1 had sufficient income to pay the sale price. It was only pointed out in the application for amendment that after the death of their parents, the suit property was mutated in the joint names of the plaintiff/respondent No.1 and the defendants in equal shares. Therefore, the question whether certain admissions made in the written statement were sought to be withdrawn is concerned, we find, as noted herein earlier, there was no admission in the written statement from which it could be said that by filing an application for amendment of the written statement, the appellants had sought to withdraw such admission. It is true in the original written statement, a statement has been made that it is the defendant No.1/appellant No.1 is the owner and in continuous possession of the suit property but in our view, the powers of the Court are wide enough to permit amendment of the written statement by incorporating an alternative plea of ownership in the application for amendment of the written statement. That apart, in our view, the facts stated in the application for amendment were in fact an elaboration of the defence case. Accordingly, we are of the view that the High Court as well as the Trial Court had erred in rejecting the application for amendment of the written statement on the ground that in the event such amendment was allowed, it would take away some admissions made by the defendants/appellants in their written statement. That apart, in the case of Estralla Rubber vs. Dass Estate (P) Ltd. this Court held that even there was some admissions in the evidence as well as in the written statement, it was still open to the parties to explain the same by way of filing an application for amendment of the written statement. That apart, mere delay of three years in filing the application for amendment of the written statement could not be a ground for rejection of the same when no serious prejudice is shown to have been caused to the plaintiff/respondent No.1 so as to take away any accrued right.

Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to

understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it 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. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of M/s. Modi Spinning and Weaving Mills Co.Ltd. & Anr. Vs. M/s. Ladha Ram & Co. , this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/appellants are not allowed to take inconsistent pleas in their defence.

Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.

For the reasons aforesaid, we are of the view that the High Court as well as the trial court erred in rejecting the application for amendment of written statement. Accordingly, the orders of the High Court and the trial court are set aside, the application for amendment of written statement is allowed. The defendants/appellants are directed to file an amended written statement within a period of one month from the date of production of this order before the trial court positively. Considering the facts and circumstances of this case, we direct the trial court to dispose of the suit within a period of one year from the date of communication of this order to it. The appeals are allowed. There will be no order as to costs.