

SUPREME COURT OF INDIA

Alkapuri Co-operative Housing Society Ltd.

Vs.

Jayantibhai Naginbhai (deceased) Thr.LRs.

C.A.No.154 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

09.01.2009

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and order dated 03rd March 2008 passed by a learned Single Judge of the High Court of Gujarat in Special Civil Application No.451 of 2008 whereby and where under the said Application against an order dated 01st December 2007 passed by the learned 3rd Additional Sr. Civil Judge, Surat in Regular Civil Suit No.669 of 1985 dismissing an application of the respondent seeking amendment to the plaint, was allowed.

3. The basic fact of the matter is not in dispute.

4. Plaintiff-appellant filed a suit against Surat Municipal Corporation in its capacity both as a town planner and as Local Authority on or about 08th May 1985 before the learned Civil Judge, Surat which was earmarked as Regular Civil Suit No.617 of 1985. Deceased-respondent herein, claiming to be an allottee in respect of plot no.29-B of the Town Planning Scheme No.3 also filed a suit against the appellant herein praying, inter alia, for the following reliefs :

“Therefore the plaintiff humbly prays that,

(1) Be pleased to restrain the defendants from interfering and causing obstruction on the land situated in Surat City, Katargam Town Planning Scheme No.3 having Final Plot No.29-B or cause to interfere, and to restrain from causing any interference or obstruction in their possession and occupation, nor put up any compound wall or fencing, such injunction orders be passed against the defendants.

(2) Be pleased to award the entire costs of this suit from the defendants.

(3) Be pleased to grant any other and further relief as may deem fit in the facts of this matter.”

5. Indisputably, in the said suit, the respondent-plaintiff filed an application for grant of temporary injunction which was rejected by an order dated 18th December 1985. Respondent thereafter filed an application for his impleadment in the suit filed by the appellant herein. We are informed at the Bar that the said matter is pending before the Gujarat High Court.

6. Legal representatives of the deceased respondent on or about 09th April 2003 filed an application for amendment of the plaint in terms whereof they not only sought to implead Town Planner, Surat Municipal Corporation but also Surat Municipal Corporation as such as party defendants. In the said application for amendment, respondents, inter alia, contended that having regard to an order of injunction passed in the suit by the appellant, they did not obtain peaceful possession of the plot in question. On the aforementioned premise, the following paragraphs were sought to be added in the plaint:

“... .. Alternatively, Below the Town Planning Scheme the defendant No.1 in this matter has not handed over the peaceful possession of the Final Plot No.29-B, if the Honourable Court should arrive on such decision then in these circumstances the defendants in this matter or the defendant who is held responsible then from the said defendant the peaceful possession of the Final Plot No.29-B be allotted from the defendant Nos.2-3 from other lands admeasuring 3689 sq.mts. land be allotted for obtaining such relief the suit is filed. Amendment No.3 (1-a) Alternatively if the Honourable Court arrives at the conclusion that in this matter the peaceful possession of the suit Final Plot No.29-B of the defendant No.1 is not handed over to the plaintiff then in these circumstances the final Plot No.29-B 3689 sq.mts. of land peaceful possession be awarded from the defendant or any defendant held responsible, and the decree to this effect be passed in favour of the plaintiff and if the Honourable Court does not find it appropriate to pass such orders then from amongst the defendants paiki any of the defendants that is held responsible then the land equal to the Final Plot No.29-B 3689 sq.mts. of other land be allotted to the plaintiff, and hand over the peaceful possession in favour of the plaintiffs, for this if found necessary then the Commissioner of appropriate authority be appointed and accordingly the possession of the land be handed over, be pleased to pass such orders in the interest of justice.”

7. The said application for amendment of plaint was dismissed by the learned 3rd Additional Sr. Civil Judge on 01st December 2007, inter alia, opining that having regard to the provisions of Section 487 of the Bombay Provincial Municipal Corporation Act, no suit could have been filed against the Corporation until expiration of one month from the date of service of notice issued for the said purpose. It was furthermore opined that the respondents could not be permitted to amend the plaint after a period of 18 years of filing of the suit.

8. The High Court, however, as noticed hereinbefore, by reason of the impugned judgment, reversed the said order dated 01st December 2007, inter alia, relying on or on the basis of the

decisions of this Court in the case of *Pankaja & Anr. v. Yellappa (Dead) by LRs & Ors¹ and Sampath Kumar v. Ayyakannu & Anr.²*.

9. Mr. Amar Dave, learned counsel appearing on behalf of the appellant would submit that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the plaintiff-respondents, by reason of the said application for amendment of the plaint, sought to change the entire nature and character of the suit. According to the learned counsel, the plaintiff-respondents in their suit proceeded on the basis that they were in possession of the plot No.29-B, i.e., the plot in suit. However, as no order of injunction had been passed in the said suit, as had been prayed for by the deceased respondent and furthermore in view of the fact that an order of injunction had been passed in favour of the appellant in its suit, they have not only sought to implead the Town Planner as a party defendant in the suit but had prayed for an alternative relief to grant allotment of an alternative plot in the event they are not found to be in possession of the said plot.

10. Mr. K.K. Trivedi, learned counsel appearing for the respondents would contend that whereas the appellant herein had filed a suit questioning the legality and/or validity of the Town Planning Scheme, in effect and substance, by reason of the amendment sought for in the plaint, the deceased respondent prayed for implementation of the Town Planning Scheme. In that view of the matter, the learned counsel would contend that neither only the question of limitation arises but also if the amendment of the plaint, as prayed for, is allowed, the real issue between the parties would be determined as a result whereof multiplicity of proceedings can be avoided.

11. It is unfortunate that two suits filed by the parties hereto as far back as in 1985 are still pending before the learned Civil Judge for one reason or the other. The fact, however, remains that the deceased-respondent who were was not a party to the appellant's suit being Suit No.617 of 1985, had filed a suit subsequent thereto only with a prayer of grant of permanent injunction.

12. In the year 2003, long after the deceased respondent's prayer for injunction had been rejected, his legal representatives filed the aforementioned application for amendment of the plaint. A bare perusal of the prayers made in the said application clearly goes to show that by reason thereof the no prayer has been claimed by the respondents as against the appellant herein. The alternative prayer, if it is to be granted, can be granted only against the Corporation as Town Planner as also as the local authority in their statutory capacities, whether such an alternative plot could be allotted to the plaintiff-respondents is a matter of concern by and between the Town Planner and the plaintiff-respondents wherewith the defendant- appellant had nothing to do.

13. Respondents, we may notice, in their counter affidavit filed before us themselves have categorically stated that they, in law, are entitled to take recourse to such remedies as are available to them for the purpose of grant of allotment of an alternative plot and/or for implementation of the Town Planning Scheme. If they had an independent cause of action

against the Corporation either in its capacity as a town planner or as a local authority, in our opinion, the same by itself cannot be a ground for filing an application for amendment in the suit pending between the parties wherein, inter alia, the question of possession, inter se, is required to be determined.

14. The High Court as also the learned counsel appearing for the respondents, as noticed hereinbefore, have strongly relied upon the decision of this Court in the case of Pankaja (supra) wherein relying on or on the basis of a decision of this Court in the case of *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*³, this Court opined that in an application for amendment of the plaint it may have to be kept in mind that the discretionary jurisdiction in that behalf can be exercised by the court even if the suit is barred by limitation.

15. It is neither in doubt nor in dispute that the court's jurisdiction to consider an application for amendment of pleading is wide in nature, but, when, by reason of an amendment, a third party is sought to be impleaded not only the provisions of O.VI R.17, *Code of Civil Procedure* (C.P.C.) but also the provisions of O.I R.10, C.P.C. would come into play. When a new party is sought to be added, keeping in view the provisions of sub- rule (5) of Rule 10 of Order I, C.P.C., the question of invoking the period of limitation would come in.

16. The High Court, in our opinion, in a case of this nature, should not have interfered with the discretionary jurisdiction exercised by the learned 3rd Additional Sr. Civil Judge. The question as to whether an application for amendment should be allowed in spite of delay and laches in moving the same, would depend upon the facts and circumstances of each case where for a judicial evaluation would be necessary.

17. The decision in the case of Pankaja (supra) itself is an authority for that proposition. So far as the decision in the case of Sampat Kumar (supra) is concerned, this Court has struck a bit different note therein as it was observed :

“10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. [See observations in *Siddalingamma v. Mamtha Shenoy*⁴].”

18. There cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit. We have noticed hereinbefore that the plaintiff-respondents in their application for amendment of the plaint themselves accepted the fact that the appellant herein not only had filed a suit prior in point of time to the suit filed by the deceased respondent but had also obtained an injunction as a result whereof they did not obtain effective possession of the suit land. If that be so, in our opinion, the plaintiff-respondents in effect and substance are

seeking to alter the basic structure of the suit which in the case of Sampath Kumar (supra) itself has been held to be impermissible.

19. For the reasons aforementioned, we are of the opinion that the High Court committed a jurisdictional error in interfering with the well considered judgment and order of the learned 3rd Additional Sr. Civil Judge rejecting the application filed by the respondents for amendment of the plaint. The impugned judgment is, therefore, set aside and the appeal is allowed.

20. However, if the respondents have independent cause of action against the Municipal Corporation, they may take recourse to such remedies which are available in law.

¹(2004) 6 SCC 415

²(2002) 7 SCC 559

³AIR 1957 SC 357

⁴(2001) 8 SCC 561