SUPREME COURT OF INDIA

Peethani Suryanarayana

Vs.

Repaka Venkata Ramana Kishore

C.A.No.942 of 2009

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

12.02.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Jurisdiction of a civil court to allow an application for amendment of plaint after a final decree is passed is in question in this appeal which arises out of a judgment and order dated 10.08.2005 passed by the High Court of Judicature of Andhra Pradesh in Civil Revision Petition No. 3666 of 2005.

3. The said question arises in the following factual matrix: A suit for partition as also for a decree for setting aside some deeds of sale executed in favour of some of the defendants was filed by the respondent No. 1.Indisputably, during pendency of the said suit, the defendant Nos. 3 to 7 sold their right, title and interest in favour of the appellants by reason of registered deeds of sale dated 29.06.1992 and 7.08.1992. The said defendants having not taken any further steps in the said suit, it was directed to be heard exparte against them.

4. Appellants herein filed an application for impleading themselves as parties in the said suit, which was rejected by an order dated 4.08.1993. Aggrieved by and dissatisfied therewith, they filed a revision application before the High Court. The High Court by reason of an order dated 3.07.1998 purported to have allowed the appellants to participate in the final decree proceedings, stating:

> "The plaintiff had filed the aforesaid suit for partition claiming half share in the total property. The said suit was decreed in terms of the prayer made in the suit. Before the suit was decreed, the defendants 3 to 7 in the said suit were set ex-parte from whom the present petitioners alleged to have purchased their shares. When the preliminary decree is passed purchaser of the shares of the defendants are entitled to participate in the final decree proceedings to work out the equities."

5. Pursuant thereto or in furtherance of the said order, the appellants participated in the final decree proceeding. The final decree was passed on 17.12.2001. Validity or otherwise of the said final decree was not questioned. It, thus, attained finality.

6. Respondent No. 1 thereafter filed an application for amendment of a mistake, said to be a clerical one, in the decree, seeking deletion of the Town Survey No. 462 and substituting the same by the Town Survey No. 463.

> "The said application was allowed by an order dated 25.08.2003. Defendant No. 4 in the suit filed a revision application there against, which was dismissed by the High Court by an order dated 19.12.2003 opining that the mistake was a clerical one."

7. Appellants herein filed an application purported to be under Section 151 of the Code of Civil Procedure for setting aside the said order dated 25.08.2003, which was dismissed by an order dated 14.03.2005. The High Court, by reason of the impugned judgment dated 10.08.2005 dismissed the revision application filed by the appellants there against. Appellants are, thus, before us.

8. Mr. Mahabir Singh, learned senior counsel appearing on behalf of the appellants, would submit:

> "(i) The learned Trial Judge as also the High Court committed a serious error in passing the impugned judgment insofar as they failed to take into consideration that an application for amendment of plaint was not maintainable after passing of a decree.
>
> (ii) Appellants herein having been impleaded as a party in the final decree proceedings in terms of the order of the High court dated 3.07.1998, the Trial Court was obligated to serve a notice on the application for amendment of plaint as also hear the appellants thereupon.
>
> (iii) Although entertainment of an application for amendment of plaint after a decree is passed may be permissible in law, by reason thereof, the lands in suit cannot be substituted by another."

9. Mr. P.S. Narasimha, learned senior counsel appearing on behalf of the respondents, on the other hand, would contend:

> "(i) Amendments, which do not affect the interest of the other parties, for a bonafide purpose and for effective execution of the decree, should be allowed.
>
> (ii) The main object of the rule being that the court should allow all amendments which are necessary to determine the real question in controversy between the parties without causing injustice to the other side and only because the parties at one point of time were negligent or careless in mentioning the correct plot number, the same, by itself, shall not be a ground for taking away the right vested in a party by reason of a

valid decree passed in his favour as by reason thereof the identity of suit land is not changed.

(iii) Wrong description of a property in the plaint despite passing of a decree should not be rejected where it is immaterial whether errors were introduced in the plaint or any other document, if it is found that only clerical mistakes were made which could be corrected for the purpose of proper execution of a decree."

10. The factual matrix involved in the matter, as noticed hereinbefore, is not in dispute.

"It is also not in dispute that in the plaint suit land was described as Revisional Survey No. 165. The village became a part of the municipality, by reason whereof a new Town Survey was assigned to the suit land being Town Survey No. 463. However, in the plaint and consequently in the preliminary decree as also in the final decree, Town Survey No. 462 was mistakenly mentioned, which was evidently a typographical mistake."

11. The power of the court to allow such an application for amendment of plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors, viz., (i) the application must be bonafide; (ii) the same should not cause injustice to the other side and (iii) it should not affect the right already accrued to the defendants.

12. Appellants herein are pendent elite purchaser from the Defendant Nos. 3 to 7. A preliminary decree was passed against them. It has attained finality. They were also allowed to participate in the final decree proceedings. A final decree was also drawn up. It also attained finality. The respective shares of the parties inter se in the joint family property as also the plots of the lands which were required to be allocated respectively in their favour is no longer in dispute. It is also not in dispute that the appellants, being purchasers of undivided share in a joint family property, are not entitled to possession of the land what they have purchased. They have in law merely acquired a right to sue for partition. [See *M.V.S. Manikayala Rao v. M. Narasimhaswami and others*[1] *and Hardeo Rai v. Sakuntala Devi and Others*[2]]

13. In view of the aforementioned legal position, the appellants merely could have filed a suit for partition either as a plaintiff or defendant in respect of the property which was joint family property.

14.On a query made by us, it was stated at the bar that the deeds of sale dated 29.06.1992 and 7.08.1992, in terms whereof the appellants purchased share in the joint family property, consisted of the suit lands including the aforementioned Town Survey No. 463. It is not the case of any of the party to the suit that the Town Survey No. 462 was the joint family property or could have otherwise been the subject matter of the said suit for partition. In *Sajjan Kumar v. Ram Kishan*[3], this Court held:

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit."

In *Niyamat Ali Molla v. Sonargon Housing Cooperative Society Ltd. and Others*[4] this Court held :

"25. It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some blanks in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the respondents from the fruit of the decree. If the appellant herein did not file any written statement, he did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate- Commissioner has also been appointed. We, therefore, are of the opinion that only because the JL numbers in the schedule was missing, the same by itself would not be a ground to interfere with the impugned order."

In *North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LRs.*[5], this Court held:

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors. which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had

been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see: Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar)"

15. There cannot be any doubt whatsoever that the principles of natural justice are required to be complied with. But, in a case of this nature, the same would be an empty formality. The facts are not disputed. The identity of the suit land has not been changed. It is not a case where, as submitted by Mr. Mahabir Singh, one land is being substituted by another. The fact that the town survey No. 463 is a joint family property is not in dispute. As indicated hereinbefore, it is the same plot which was the subject matter of sale and only in respect thereof the appellants herein could claim partition. Appellants have also furthermore not been able to show as to how and in what manner they have been prejudiced.

16. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

[1]*AIR 1966 SC 470*
[2]*(2008) 7 SCC 46*
[3]*(2005) 13 SCC 89*
[4]*(2007) 13 SCC 421 : AIR 2008 SC 225*
[5]*(2008) 8 SCC 511*