SUPREME COURT OF INDIA

Abdul Razak (D) Thr.Lrs.

Vs.

Mangesh Rajaram Wagle

C.A.No.55 of 2010

(G.S. Singhvi J.)

07.01.2010

JUDGEMENT

G.S.Singhvi, J.

1. Leave granted.

2. The appellants are aggrieved by the order of the learned Single Judge of the Bombay High Court, Goa Bench whereby he allowed the writ petition filed by respondent Nos. 1 and 2 and granted their prayer for striking off the additional written statement filed by the appellants after their impleadment as legal representatives of defendant No.2 - Abdul Razak.

3. Respondent Nos. 1 and 2 filed suit in the Court of Civil Judge (Senior Division), Panaji (hereinafter described as `the trial Court') for declaring them as lawful tenants of suit premises and also for restraining the defendants - Suresh D. Naik (respondent No.3 herein) and Abdul Razak, who died during the pendency of the suit and is being represented by his legal representatives (appellants herein) to remove the lock allegedly put by respondent No.3 on the suit premises along with materials dumped there. An alternative prayer made by respondent Nos. 1 and 2 was for recovery of possession of suit premises in case it was held that they had already been dispossessed. The substance of the case set up by respondent Nos. 1 and 2 before the trial Court is that the suit premises were let out to their predecessor Shri Rajaram D. Wagle in 1951 by one Jussab Abdul Karim at a monthly rent of Rs.15/- which was subsequently increased to Rs.25/-; that the owner-cum-landlord sold the premises to Abdul Kadar Haji Jaffar (grandfather of appellant Nos.2, 3, 4 and 6); that Rajaram D. Wagle died on 29.4.1981 and after his death they have been using the suit premises for parking their cars; that on 5.1.1992, respondent No.3 broke open the lock of the suit premises and dumped his goods i.e., boxes of liquor bottles, but the same were removed by the police on a complaint made by respondent No.1 in that regard; that on 8.1.1992, respondent No. 3 again broke open the lock and forcibly occupied the suit premises and this time the police did not act on the complaint made by them.

4. In his written statement, respondent No.3 not only denied the averments contained in the plaint that he had illegally taken possession of the suit premises after breaking open the locks put by respondent Nos. 1 and 2, but also pleaded that after being forced to leave Kuwait in the wake of war, he came to India and is doing business of distribution of liquor in the suit premises on the basis of permission accorded by defendant No.2 - Abdul Razak, who was a family friend. Respondent No.3 further pleaded that the competent authority granted him excise licence after being satisfied that the suit premises were suitable for doing business in liquor.

5. Abdul Razak (predecessor of the appellants) filed a separate written statement. He largely denied the averments contained in the plaint and pleaded that much before his death, Shri Rajaram D. Wagle had voluntarily surrendered the suit premises and thereafter, respondent No.3 was allowed to occupy the same for conducting business of distribution of liquor.

6. Abdul Razak died during the pendency of the suit. Thereupon, respondent Nos. 1 and 2 filed an application for impleading his widow (appellant No.1), son and three daughters (appellant Nos. 2, 3 4 and 6) and two son-in- laws (appellant Nos. 5 and 7) in place of the deceased. Appellant Nos. 3, 4 and 6 objected to the impleadment of the son-in-laws by stating that they are non- Goans and are not governed by personal law relating to properties in Goa. They 4 also objected to the impleadment of appellant Nos. 1 and 3 i.e., the widow and son of the deceased on the ground that the suit premises had been allotted to them in the inventory proceedings.

7. By order dated 10.12.2003, the learned trial Court overruled all the objections raised by appellant Nos. 3, 4 and 6 and allowed the application of respondent Nos. 1 and 2 by observing that joining of the widow, son and son-in- laws of the deceased will not prejudice the daughters and they will be entitled to take defence suitable to their plea.

8. In furtherance of the observation made by the trial Court in the aforementioned order, the appellants filed additional written statement dated 3.3.2004, the sum and substance of which is that in the inventory proceedings No.80/1989/A held in the Court of Civil Judge (Senior Division) at Panaji after the death of Abdul Kadar Haji Jaffar and his wife, the suit property was allotted to their grand-daughters (appellant Nos.3, 4 and 6) because other heirs did not object to this. The appellants pleaded that in the meeting held on 10.4.1990, members of the Family Council unanimously agreed for allotment of the properties and this was approved by the Court vide order dated 26.9.1990. A reference was also made to Special Civil Suit No. 89/99/B filed by appellant Nos. 3, 4 and 6 in the trial Court for grant of permanent injunction on the ground that respondent Nos. 1 and 2 had filed Execution Application No.15/98/A for being 5 put in possession of the suit premises in execution of order dated 17.4.1997 passed in an application for temporary and mandatory injunction. According to the appellants, the trial Court allowed the execution application and the appeal and special leave petition filed by them were dismissed by the High Court and this Court respectively. In the additional written statement, it was also averred that son-in-laws of late Abdul Razak have no right, title or interest in the suit property and, therefore, they cannot be treated as his legal representatives.

The impleadment of appellant No.2 was also questioned on the premise that he has no right in the suit property.

9. After filing of the additional written statement, the trial Court framed the following additional issues:

> "1. Whether the plaintiffs prove that defendants illegally damaged and destroyed the two ramps existing adjacent to the entrance of the suit premises?
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> 2. Whether the plaintiffs prove that the suit filed by them for declaration of tenancy right is maintainable for want of the owners of the suit premises?
>
> 3. Whether the plaintiffs prove that Sajeeda Razak, Matheen I Saint, Mohammad Arif Razak Ajaz Ahmed are legal representatives of deceased defendant No.2 impleaded in the suit as defendants 2(i), 2(ii), 2(v) and 2(vii) respectively. What relief? What order?"

10. Respondent Nos. 1 and 2 did not object to the taking on record of the 6 additional written statement filed by the appellants or framing of the additional issues and led evidence, the recording of which was completed during 2006.

> "Thereafter, the appellants produced their evidence. When the case was fixed for cross-examination of appellant No.3, who is one of the witnesses cited by the appellants, respondent Nos. 1 and 2 filed application dated 9.10.2007 for striking off the additional written statement by asserting that the legal representatives of the deceased defendant No.2 do not have right under the Code of Civil Procedure (CPC) to file such written statement and, in any case, they cannot be allowed to raise new plea about their title to the suit premises. Respondent Nos. 1 and 2 further pleaded that the additional written statement is liable to be struck off because before filing the same, the appellants did not seek leave of the court. In their reply, the appellants pleaded that the additional written statement was filed with a view to bring on record the facts relating to the inventory proceedings and the same cannot be struck off because the applicants have failed to make out a case for exercise of power by the court under Order VI Rule 16 CPC."

11. The trial Court dismissed the application of respondent Nos. 1 and 2 by observing that leave of the Court will be presumed to have been granted because the additional written statement was filed on 3.3.2004 and respondent Nos. 1 and 2 had not objected to the same. As regards their plea that new or inconsistent case was sought to be set up by the appellants, the trial Court observed that this point can be considered at the time of deciding the case on merits. The trial Court then referred to Order VI Rule 16 and held that respondent Nos. 1 and 2 have not been able to make out a case for striking off the additional written statement.

12. Respondent Nos. 1 and 2 challenged the order of the trial Court in W.P.No. 58/2008. By the impugned order, the learned Single Judge allowed the writ petition and held that the legal representatives of deceased defendant No.2 could have taken a plea which was appropriate to their character as legal representatives, but they were not entitled to take a plea derogatory to the plea already taken. The learned Single Judge further held that the trial Court was not justified in dismissing the application on the ground of delay, which could have been compensated by imposing cost.

13. We have heard learned counsel for the parties. Three questions which merit consideration by this Court are - (i) What is the effect of delay in filing the application by respondent Nos. 1 and 2 for striking off the additional written statement? (ii) Whether the High Court could pass an order for striking off the additional written statement despite the fact that respondent Nos. 1 and 2 failed to make out a case for exercise of power by the court under Order VI Rule 16 CPC? (iii) Whether the High Court was justified in setting aside the order of the trial Court without being satisfied that the same was vitiated by an error of jurisdiction or an error of law apparent on the face of the record and that such error resulted in substantial failure of justice? Re: (i):

14. Undisputedly, the additional written statement was filed on 3.3.2004 and the same was taken on record without any objection from respondent Nos. 1 and 2, who did not even seek leave of the court to file further pleadings in the light of the additional written statement. Although, the parties have not furnished details of the proceedings of the case for next about two years, this much is clear that respondent Nos.1 and 2 led evidence in support of their case and completed the same in 2006. In the absence of any contrary evidence, it can be reasonably and legitimately presumed that respondent Nos. 1 and 2 must have produced their evidence keeping in view the pleadings contained in the additional written statement. They filed application for striking out the additional written statement after a long time gap of three years and six months without explaining as to why they did not object to the taking on record of the additional written statement and framing of additional issues in 2004 and why they chose to lead evidence knowing fully well that after their impleadment as legal representatives of Abdul Razak, appellant Nos. 3, 4 and 6 had pleaded that they had become owners of the property by virtue of the orders passed in the inventory proceedings. The learned Single Judge casually brushed aside and rejected the plea of the appellants that the application filed by respondent Nos. 1 and 2 for striking off the additional written statement was highly belated and no explanation worth the name had been offered for the same by observing that the trial Court could have compensated them by imposing cost. In our view, the learned Single Judge should have seriously examined the issue of delay in the backdrop of the facts that respondent Nos. 1 and 2 did not object to the taking on record the additional written statement or framing of additional issues and led their evidence and further that the application was filed after almost one year of completion of their evidence. The observation made by the learned Single Judge that the proceedings of the suit will be delayed if the legal representatives of the deceased defendant are allowed to take the plea based on their title is neither here nor there. It is true that the suit filed by respondent Nos. 1 and 2 is pending for last about 17 years, but there is nothing on record to show that the appellants or their

predecessors are responsible for the delay. The death of Abdul Razak was not a predictable event, the happening of which could be averted by the parties or the court. In any case, the appellants cannot be blamed for the delay, if any, in the trial of the case. As a matter of fact, respondent Nos. 1 and 2 have delayed the proceedings for over two years by filing frivolous application for striking off the additional written statement which, as mentioned above, was taken on record in March, 2004.
Re: (ii):

15. Order VI Rule 16 CPC which empowers the Court to strike out the pleadings reads thus:

> "Striking out pleadings. - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-- (a) which may be unnecessary, scandalous, frivolous or vexatious, or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of the court."

16. A reading of the plain language of the above reproduced provisions makes it clear that the court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e., where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court.

17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since the striking off pleadings has serious adverse impact on the rights of the concerned party, the power to do so has to be exercised with great care and circumspection. In *11 Knowles v. Roberts*[1], Boven, L.J. Observed:

> "It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognized principle that a defendant may claim ex debito justitiae to have the plaintiff's claim presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery."

18. The above reproduced observations have been quoted with approval in *Sathi Vijay Kumar v. Tota Singh and others*[2]. In that case, the order passed by the High Court deleting paragraphs 11, 12 and 13(a) from the election petition filed by the appellant was questioned before this Court on the ground that the case does not fall within the ambit of Order VI Rule 16.

> This Court first held that the provisions of Order VI Rule 16 CPC are applicable to election petitions. The Court then referred to the earlier judgments in *Roop Lal Sathi v. Nachhattar Singh Gill*[3] , *K.K. Modi v. K.N. Modi*[4], *Union Bank of India v. Naresh Kumar*[5] and held that the power to strike out pleading is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection.

19. In this case, the learned trial Court did make a reference to the provisions of Order VI Rule 16 and held that the application made by the plaintiffs (respondent Nos. 1 and 2 herein) does not fall in either clauses of Rule 16. The learned Single Judge of the High Court did not even bother to notice Order VI Rule 16 what to say of considering its applicability to the pleadings contained in the additional written statement and granted the prayer of respondent Nos. 1 and 2 by assuming that the plea raised by the appellants was inconsistent with the defence set up by their predecessor-in-interest. In our opinion, the learned Single Judge did not have the jurisdiction to direct striking off the additional written statement without being satisfied that respondent Nos. 1 and 2 were able to make out a case for exercise of power by the court under either of three clauses of Order VI Rule 16 CPC.

Re: (iii) :

20. Although, from the record produced before this Court it is not clear whether respondent Nos. 1 and 2 had filed writ petition under Article 226 of the Constitution of India or they had invoked supervisory jurisdiction of the High Court under Article 227 of the Constitution, but a reading of the impugned order does not leave any manner of doubt that while granting relief to respondent Nos. 1 and 2, the learned Single Judge did not keep in mind the guiding principles laid down by this Court for exercise of power under Articles 226 or 227 of the Constitution. It seems to us that the learned Single Judge decided the matter by 13 assuming that he was hearing an appeal against the order of the trial Court. If this was not so, the learned Single Judge was duty bound to first consider whether he was called upon to exercise power under Article 226 of the Constitution of India or under Article 227 thereof. If respondent Nos. 1 and 2 had invoked the High Court's jurisdiction under Article 226, then the learned Single Judge ought to have considered whether the trial Court committed a jurisdictional error by refusing to strike off the additional written statement filed by the appellants or it was a case of failure on the part of the trial Court to exercise the power vested in it under Order VI Rule 16 CPC or the order under challenge was vitiated by an error of law apparent on the face of the record or there was violation of the rules of natural justice. In either case, the learned Single Judge was also required to consider whether there has been

substantial failure of justice or manifest injustice has been caused to respondent Nos. 1 and 2 on account of the trial Court's refusal to strike off the additional written statement. These are the parameters laid down by this Court in Syed Yakoob v. K.S. Radhakrishnan AIR 1964 SC 477. If the petition filed by respondent Nos. 1 and 2 was under Article 227 of the Constitution of India, then the learned Single Judge should have taken note of the often quoted judgment in *Surya Dev Rai v. Ram Chander Rai*[6] in which a two-Judge Bench, after threadbare analysis of Articles 226 or 227 of the Constitution and considering large number of judicial precedents on the subject, recorded the following conclusions:

> "14 "(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.
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> (2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.
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> (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.
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> (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.
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> (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
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> (6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning.

Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

15 (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions.

While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

21. We regretfully note that while deciding the writ petition filed by 16 respondent Nos. 1 and 2, the learned Single Judge did not keep in mind the principles laid down by this Court in the aforementioned two judgments and decided the same as if he was exercising appellate jurisdiction of the High Court.

"There have been several other instances in which different High Courts have passed orders in exercise of power under Articles 226 or 227 of the Constitution of India disregarding the limitations identified and indicated by this Court in several decisions

on the exercise of that power. We hope and trust that in future the High Courts would keep in view the limitations of certiorari jurisdiction/supervisory jurisdiction and refrain from deciding the writ petitions filed under Article 226 or petitions/applications filed under Article 227 of the Constitution as if they are adjudicating appeals filed against the orders of the lower courts or other judicial/quasi judicial bodies/authorities."

22. Before concluding, we deem it appropriate to consider the argument of the learned counsel for respondent Nos. 1 and 2 that the pleadings contained in the additional written statement filed by the appellants were inconsistent with and beyond the scope of the defence set up by Abdul Razak in the original written statement and the trial Court was duty bound to discard the same in view of the provision contained in Order 22 Rule 4 CPC and the judgments of this Court in *J.C. Chatterjee v. Sri Kishan*[7], *Bal Kishan v. Om Parkash*[8] and *Vidyawati v. Man Mohan*[9]. In our opinion, the argument of the learned counsel is 17 meritless and deserves to be rejected. In the plaint filed by them, respondent Nos. 1 and 2 did not make a mention of the inventory proceedings held after the death of Abdul Kadar Hazi Jaffar and his wife and order dated 26.9.1990 passed by the trial Court. In his written statement, Abdul Razak pleaded that before his death, the tenant Shri Rajaram D. Wagle had surrendered possession of the premises to him and that the plaintiffs had nothing to do with the suit premises.

"He further pleaded that the suit premises were given to defendant No.2 for conducting business of distribution of liquor. There is nothing in the written statement of Abdul Razak from which it can be inferred that he has claimed ownership over the suit property. After they were brought on record as legal representatives of late Abdul Razak, the appellants filed additional written statement incorporating therein the plea that the suit property had become subject matter of inventory proceedings No.80/89/A and the same was allotted to the daughters of Abdul Razak i.e. appellant Nos.3, 4 and 6. The appellants also pleaded that in the meeting of the Family Council held on 10.4.1990, a unanimous decision was taken for allotment of the properties and the same was approved by the trial Court vide order dated 26.9.1990. According to the appellants, Abdul Razak was looking after the suit property because at the time of death of his parents, appellant Nos. 3, 4 and 6 were minor. Therefore, it cannot be said that the plea raised by the appellants is inconsistent with the averments contained in the original written statement by Abdul Razak. Order 22 Rule 4(1) and (2) CPC on which reliance has been placed 18 by learned counsel for respondent Nos. 1 and 2 reads as under:

"4. Procedure in case of death of one of several defendants or of sole defendant.--(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant."

23. In J.C. Chatterjee's case, this Court interpreted the above reproduced provision and held:

"Under sub-clause (ii) of Rule 4 of Order 22 of the Civil Procedure Code any person so made a party as a legal representative of the deceased, respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title."

24. In Bal Kishan's case, the proposition laid down in J.C. Chatterjee's case was reiterated, but its width was limited by observing that the same would apply only to those cases where the Court hearing the case has jurisdiction to try 19 the issues relating to independent title also. The facts of Bal Kishan's case were that respondent No. 1 therein filed a petition for eviction of the tenant by alleging that the latter had sublet the premises without his consent. During the pendency of the petition, the tenant Musadi Lal died. Thereupon, the appellant Bal Kishan filed an application for being brought on record as legal representative of the deceased. The Rent Controller allowed the application.

"Thereafter, the appellant filed additional written statement asserting therein that the premises in question being residential and commercial, the legal heir of the tenant could not be treated as a tenant as defined under Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and that possession of such legal heir of the tenant would be that of a trespasser. He accordingly prayed for dismissal of the eviction petition. The Rent Controller rejected the appellant's plea and allowed the eviction petition by holding that Musadi Lal had sublet the premises to Med Ram without his consent. The appeal and revision filed by the appellant were dismissed by the Appellate Authority and the High Court respectively. Before this Court, the appellant relied upon the ratio of J.C. Chatterjee's case and argued that he was entitled to raise an additional plea that the eviction petition was not maintainable. While rejecting this plea, this Court held:

But in the instant case the appellant cannot claim the benefit of the above decision for two reasons. First, the appellant had not been brought on record as a respondent in the eviction petition in his personal capacity but had been brought on record only as the legal representative of Musadi Lal. Secondly, in the circumstances of this 20 case, even if a prayer had been made to bring the appellant on record in his personal

capacity, the Rent Controller could not have allowed the application and permitted him to raise the plea of independent title because such a plea would oust the jurisdiction of the Rent Controller to try the case itself. The observations made in the Jagdish Chander Chatterjee case have to be confined to only those cases where the court hearing the case has jurisdiction to try the issues relating to independent title also. The Rent Controller, who had no jurisdiction to pass the decree for possession against a trespasser could not have, therefore, impleaded the appellant as a respondent to the petition for eviction in his independent capacity."

(emphasis supplied)

25. In Vidyawati's case, this Court considered the question whether a person impleaded as a legal representative of the deceased defendant can independently claim title to and interest in the property under a will. It was contended by the appellant that claim of the original defendant and that of the legal representative are founded on the will executed by Champawati and the courts below were not right in refusing to permit her to file additional written statement. While approving the view taken by the courts below, this Court observed "whether the petitioner has independent right, title and interest de hors the claim of the first defendant is a matter to be gone into at a later proceeding.

"It is true that when the petitioner was impleaded as a party-defendant, all rights under Order XXII Rule 4(2), and defences available to the deceased defendant became available to her. In addition, if the petitioner had any independent right, title or interest in the property, then she had to get herself impleaded in the suit as a party-defendant. Thereafter, she could resist the claim made by the 21 plaintiff or challenge the decree that may be passed in the suit. For taking this view, the Court relied upon the judgments in J.C. Chatterjee's case and Bal Kishan's case."

26. The judgments of Bal Kishan's case and Vidyawati's case are clearly distinguishable. In the first case, the earlier judgment in J.C. Chatterjee's case, which substantially supports the appellants was distinguished on the ground that the plea raised by the impleaded legal representative of the tenant was inconsistent with his defence and, if accepted, the same would result in ouster of the jurisdiction of the Rent Controller. In the second case also, the Court found that the plea raised by the appellant, who was impleaded as legal representative of the defendant that she had independent title under the will executed by Champawati was not in consonance with the plea taken by the original defendant. However, as discussed in the earlier part of the judgment, the claim made by the appellants is in no way inconsistent with or derogatory to the defence set up by Abdul Razak. In any case, once the additional written statement filed by the appellants was taken on record without any objection by respondent Nos. 1 and 2, who also led their evidence keeping in view the pleadings of the additional written statement, the High Court was not at all justified in allowing the application filed for striking off the additional written statement and that too without even adverting to Order VI Rule 16 CPC and considering whether respondent Nos. 1 and 2 were able to make out a case for 22 exercise of power by the court under that provision.

27. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the one passed by the trial Court is restored. Respondent Nos. 1 and 2 shall pay cost of Rs.25,000/- to the appellants for burdening them with unnecessary litigation.

[1]*(1888) 38 Ch D, 263*
[2]*(2006) 13 SCC 353*
[3]*(1982) 3 SCC 487*
[4]*(1998) 3 SCC 573*
[5]*(1996) 6 SCC 660*
[6]*(2003) 6 SCC 675*
[7]*(1972) 2 SCC 461*
[8]*(1986) 4 SCC 155*
[9]*(1995) 5 SCC 431*