Prithi Pal Singh & Another

v.

Amrik Singh & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE H.L. GOKHALE

Special Leave to Petition (Civil) No. 15272 Of 2008 | 13-02-2013

This petition is directed against judgment dated 25.2.2008 of the learned Single Judge of the Punjab and Haryana High Court whereby he dismissed the second appeal filed by the petitioners and upheld the judgment and decree passed by the lower appellate Court, which had approved the decree passed by the trial Court in favour of respondent No.2 - Bakshish Singh, who is now represented by his legal representatives.

Amrik Singh (brother of respondent No.2) executed sale deed dated 21.5.1979 in favour of the petitioners and respondent No.1 in respect of 27 kanals 4 marlas land for a consideration of Rs.37,500/-. The sale deed was registered on 23.5.1979.

Respondent No.2 challenged the sale deed in Civil Suit No.353/1981 and claimed pre-emption under Section 15(1)(a) of the Punjab Pre-emption Act, 1913 (for short, 'the Act').

The petitioners and respondent No.1 contested the suit on various grounds. They pleaded that the suit for pre-emption is not maintainable and, in any case, the same is barred by time.

On the pleadings of the parties, the trial Court framed the following issues:

"1. Whether the plaintiff has got a superior right of pre-emption over the suit land? OPP

2. Whether the sale consideration was fixed in good faith and was actually paid by the defendants? OPD

3. If issue. No. 2 is not proved, what was the market value of the suit land at the time of the impugned sale? OPP

4. Whether the plaintiff has got no locus standi to file and maintain the present suit? OPD

5. Whether the zare-panjam has been deposited within time? OPP

6. Whether the suit is bad for partial pre-emption? OPD

7. Whether the suit property is co-parcenery and joint Hindu family property qua the plaintiff and vendor? OPD

8. Whether the plaintiff is estopped by his own act and conduct to file and maintain the present suit? OPD

9. Whether the present suit is benami and for the benefit of vendor? OPD

10. Whether the suit is within time? OPP

11. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

12. Whether the defendants have effected any improvement over the suit land. If so to what amount? OPD

13. Whether the defendants are entitled to recover stamps and registration charges in the eventuality of the suit being decreed. If so to what amount? OPD.

14. Relief."

Subsequently, the petitioners and respondent No.1 sought and were granted leave to amend the written statement leading to the framing of the following additional issue:

"Whether suit land is not pre-emptible in view of Section 17A of the Punjab Security of Land Tenure Act."

After considering the pleadings and evidence of the parties the trial Court decided issue Nos. 1, 4 to 13 in favour of respondent No.2. The additional issue was also decided in his favour. As a sequel to this, the trial Court decreed the suit in favour of respondent No.2.

The appeal filed by the petitioners and respondent No.1 was dismissed by the lower appellate Court vide judgment dated 30.5.1983, a reading whereof reveals that the petitioners and respondent No.1 had filed another application for amendment of the written statement, which was rejected by the lower appellate Court. On merits, no serious argument appears to have been advanced on behalf of the petitioners and this is the reason why the lower appellate Court did not independently deal with the findings recorded by the trial Court on various issues including the one relating to limitation.

During the pendency of the second appeal filed by the petitioners, respondent No.2 applied for amendment of the plaint and claimed that he was entitled to relief as co-sharer of the suit property. The learned Single Judge vide his judgment dated 22.5.1986 allowed the second appeal and rejected the application made by respondent No.2 for amendment of the plaint.

This Court reversed the judgment of the learned Single Judge, granted leave to respondent No.2 to amend the plaint and remanded the matter to the High Court for fresh disposal of the second appeal - Bakshish Singh v. Prithi Pal Singh 1995 Supp. (3) SCC 577.

After remand the learned Single Judge reconsidered the second appeal and dismissed the same. The learned Single Judge extensively dealt with the question whether the amendment made in the plaint would relate back to the date of institution of the suit or the same will be treated as effective from the date of this Court's order and held:

"The admitted facts now stand that the plaintiff and vendor are the co-sharers. The fate of the present appeal hinges upon the question "whether the amendment allowed by the Apex Court vide its judgment dated 10.11.1994 will operate from the date of the order or is deemed to have been incorporated as a part of the plaint from the date of the institution of the suit. If the amendment is considered to be part of the plaint from the date of institution of the suit, the plaintiff is bound to succeed, otherwise the suit shall fail if the amendment is found to become operative from the date of the order of the Apex Court allowing amendment. It is settled principle of law that at that time of consideration of the plea of amendment, the court is not required to go into the question of merits of the amendment sought. A party seeking the amendment may ultimately succeed or fail on the basis of the amendment is not the relevant consideration at the time the plea of amendment is to be considered. Only consideration at the time is whether such an amendment is necessary, relevant and relate to the controversy involved in the lis. Hon'ble Supreme Court by allowing the amendment of the plaint vide its order dated 10.11.1994 observed that the amendment should have been allowed, on the basis of the admitted facts. Whether the suit is barred by limitation or is within limitation, all depends upon the effective date of amendment. Mr. Goel, learned Counsel for the appellants has referred to the judgment passed in the case of Tarlok Singh vs Vijay Kumar Sabharwal 1996 PLJ 237. In this case, the parties had entered into an agreement to sell. A suit for perpetual injunction was instituted on 23.12.1987. During the pendency of the suit, an application under Order 6 Rule 17 CPC came to be filed on 17.7.1989 for converting the suit for injunction into the one for specific performance of agreement dated 18.8.1984. The amendment was allowed on 25.8.1989. A plea was raised that the suit for specific

performance is barred by limitation. This plea was considered by the Apex Court wherein following observations have been made:

"6. Shri Prem Malhotra, learned Counsel for the respondents contended that since the respondent had refused performance the suit must be deemed to have been filed on December 23, 1987 and, therefore, when the amendment was allowed, it would relate back to the date of filing the suit which was filed within three years from the date of the refusal. Accordingly, the suit is not barred by limitation. Shri U.R. Lalit, learned senior counsel for the appellant, contended that in view of the liberty given by the High Court the appellant is entitled to raise the plea of limitation. The suit filed after expiry of 3 years from 1986 is barred by limitation. The question is as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25, 1989, the suit must be deemed to have been instituted on August 25, 1989 and the suit was clearly barred by limitation. We find force in the stand of the appellant. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order 6 Rule 17 CPC on September 12, 1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989 the crucial date would be the date on which the amendment was ordered, by which date, admittedly, the suit is barred by limitation. The courts below, therefore, were not right in decreeing the suit."

In the case of Sampath Kumar vs Ayyakannu and Anr., 2002 (3) Civil Court Cases 364 (S.C.) initially, a suit for prohibitory injunction was filed in the year 1988 claiming possession of the suit property. Later in the year 1989, an application under Order VI Rule 17 CPC was made for conversion of the suit into one for declaration of title of the suit property and consequential relief of delivery of possession alleging that during the pendency of the suit, defendant dispossessed the plaintiff in January 1989. The amendment was refused.

However, in appeal before the Hon'ble Apex Court, the conditional amendment was allowed.

The Hon'ble Apex Court observed as under:

"11. In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending.

In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be. allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

xxx xxx xxx xxx

13. The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed."

From the ratio of the aforesaid judgments, following points emerge:

(a) Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;

(b) The dominant purpose of the amendment is to minimize the litigation;

(c) The amendment once allowed and incorporated relates back to the date of the initial institution of the suit;

(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.

This principle has been enunciated by the Hon'ble Apex Court in the case of Siddalingamma and another Vs Mamtha Shenoy (2001) 8 Supreme Court Cases 561, wherein the Court observed:

"10. On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the court excludes the applicability of the doctrine in a given case, the petition for eviction as amended could be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition."

(Emphasis supplied)

Mr. C.B. Goel, learned Counsel has strenuously argued that the amendment in the present case should be treated to have effected only from 10.11.1994 and the suit for pre-emption is deemed to have been instituted on the said date on the ground of the plaintiff being co-sharer. His precise contention is that the suit for pre-emption filed in the year 1994 under Clause "fourthly" Section 15(1)(b) is barred by time having been filed beyond one year from the date of the sale in

question. The appreciate this contention, the sole question is whether a new relief has been introduced way of amendment. In the case of Tarlok Singh (supra), initially, the suit was for permanent prohibitory injunction. However, by way of amendment, a new relief of specific performance was introduced which was held to be barred by time as the cause of action for the relief of specific performance had accrued to the plaintiff in the said case from the date of the execution of the agreement to sell dated 21.12.1984. Relief of specific performance was introduced in the year 1989 which was admittedly beyond three years from the date cause of action accrued. I have already extracted the relevant observations of the Hon'ble Supreme Court in regard to the amendment.

Applying the test to the fact of the present case, the plea of Mr. Goel is not sustainable. In the instant case, it was a suit for pre-emption from the initial day. Initially, the ground for seeking relief was that the plaintiff is the brother of the vendor-defendant. This was one of the grounds available under law by virtue of Clause "secondly" of Section 15(1) of the Act. This provision has, however, come to be struck down by the Supreme Court in the case of Atam Parkash (supra). The plaintiff by asking for amendment sought to introduce an additional ground on the plea that besides being the brother, he is also a co-sharer in the suit land. As observed by the Hon'ble Supreme Court, and is evident from the judgment impugned as also the report of the trial Court dated 7.3.2006, there is sufficient material/evidence already on record i.e. prior to the introduction of the amendment to establish that the plaintiff is the co-sharer with the defendant-vendor.

Through the amendment only, a new ground has been incorporated and not the new relief. Since the suit seeking the relief of pre-emption was instituted with the time, by introduction of a new ground to support the relief, the suit cannot become time barred. In the present case, the doctrine of relation back of the amendment has to apply as no new or fresh relief has been incorporated. Apart from above, there is another reason to decline the prayer of the appellants. It is settled law as is evident from the ratio of the judgment in the case of Siddalingamma (supra), that the court in appropriate case while allowing the amendment, may restrict the application of doctrine of relation back and permit the amendment from the date of the amendment. In the present case, the order of the Apex Court dated 10.11.1994 is clear and unambiguous in its terms. No such restriction has been imposed. To the contrary, the amendment rejected by

this Court has been allowed primarily on the ground that the amendment is based upon admitted facts on record. I am of the considered view that the intention of the Apex Court in allowing the amendment was/is to apply the amendment without excluding the doctrine or relation back which normally and generally governs the amendment of pleadings."

(underlining is ours)

(reproduced from the SLP paper book)

Shri P.S. Patwalia, learned senior counsel appearing for the petitioners argued that even though this Court granted leave to respondents No.2 to amend the plaint, the learned Single Judge should have dismissed the second appeal as barred by time because the amendment was filed much after expiry of the limitation. He further argued that while dismissing the second appeal, the learned Single Judge did not consider the amendment made in Section 15 of the Act by Haryana Amendment Act No.10 of 1995 and on this ground alone the impugned judgment is liable to be set aside.

In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order passed by this Court shows that the application for amendment filed by respondent No.2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time.

The argument of the learned counsel that the suit could not be decreed in view of the Haryana Amendment Act No.10 of 1995 does not require consideration because no such plea was argued before the High Court and we do not find any valid ground to allow the petitioners to raise such plea for the first time.

With the above observations, the special leave petition is dismissed.