SUPREME COURT OF INDIA

Pawan Kumar Pathak

Vs.

Mohan Prasad

C.A.No.4456 of 2016

(A.K.Sikri and R.K.Agrawal,JJ.,)

26.04.2016

JUDGMENT

A.K.Sikri,J.,

SLP (Civil) No. 16486 of 2015

1. Leave granted.

2. We have heard the matter finally at this stage itself with the consent of counsel for the parties because short issue relating to the admissibility of the evidence which was to be produced by the appellant before the trial court is involved.

3. The appellant herein had filed a suit in the court of Additional District Judge, Gwalior, Madhya Pradesh, which is registered as Case No. 5A of 2007.

4. The foundation laid to claim the aforesaid reliefs as per the averments of the plaint is that the appellant is the son and only legal heir of Hira Lal and Kesar Devi, both of whom have died intestate. It is further stated that Hira Lal had a brother named Mahadev Prasad and both these brothers were having agricultural land situated in Municipal Corporation of village Gospura bearing area number 23, survey number 1906, area 2 bigha 11 biswas, land survey number 1897, area 1 bigha 15 biswas, survey number 1898, area 2 bigha 7 biswas, survey number 1904, area 1 bigha 16 biswas, survey number 1907, area 3 bigha 12 biswas, which was purchased by the two brothers jointly from various sellers. It is further stated that after the demise of Hira Lal and Mahadev Prasad as well as wife of Mahadev, the appellant is the only legal heir who has right to inherit the aforesaid properties inasmuch as Mahadev Prasad died issueless. It is further claimed that the respondent herein has no right or concern in any manner whatsoever, in the aforesaid properties which was left by deceased Hira Lal and Mahadev Prasad.

5. In paragraph 5, the following averments are made to this effect:

"5. That despite of the fact that defendnt Ram Kishan Dubey has stated that any document is executed by Hira Lal and Mahadev Prasad no document is executed by Hira Lal, Mahadev Prasad, Kesar Devi or Shanti Devi in favour of Ram Kishan Dubey and nor there was any need to execute the same because their only son plaintiff was alive and he is adhibhashit being in capacity of owner and possessory title holder of all the properties left by Hira Lal and Mahadev Prasad."

6. In the said suit the following reliefs are prayed: -

"a. That it is to be declared that sole owner and possessory title holder of all the properties left by late Hira Lal and late Mahadev Prasad is plaintiff being sole successor.

b. Permanent injunction is to be passed on this basis that defendant should not transfer any part of the property left by deceased Hira Lal and Mahadev Prasad and should not create any obstruction in the use and utilization of the plaintiff, status quo is to be maintained.

c. Litigation expenses of the case is to be provided to the plaintiff from defendant. Any other justifiable relief which Hon'ble Court deems fit and proper is to be provided to the plaintiff from the defendant."

7. The respondent herein filed written statement and contested the aforesaid suit filed by the appellant. The respondent denied that the appellant was the son of Hira Lal. He had even moved an application for conducting DNA test of the appellant in order to prove that the appellant was not the son of Hira Lal. This application was contested by the appellant and dismissed by the trial court.

8. Thereafter, the appellant moved an application for amendment of the plaint, under Order VI Rule 17 of the Code of Civil Procedure taking a specific stand therein that he was the adopted son of late Hira Lal. The said application was dismissed by the trial court. The appellant challenged that order by filing Writ Petition No. 7500 of 2010 which was also dismissed by the High Court vide orders dated 17.01.2011. While dismissing the said writ petition, the High Court observed as under: -

"Later on, the plaintiff-petitioner filed an application under Order 6 Rule 17 C.P.C. in regard to amendment in the plaint. By way of aforesaid amendment the plaintiff-petitioner sought an amendment in the plaint to the effect that late Heeralal adopted the plaintiff-petitioner as son during his life time and an adoption deed was also executed to this effect. That application has been rejected by the trial court.

In our opinion, the amendment, which is sought by the plaintiff-petitioner by way of an application under Order 6 Rule 17 C.P.C. in regard to the fact that the plaintiff-petitioner is an adopted son of late Heerala, has rightly been rejected by the trial court because it would be inconsistent to earlier plea of the plaintiff-petitioner and it would

amount to grant of an opportunity to the plaintiff to fill up the lacuna of the evidence. Hence, in our opinion, there is no illegality or irregularity committed by the trial court in rejecting the application for amendment filed under Order 6 Rule 17 C.P.C."

9. The appellant did not challenge the aforesaid order at that stage by filing the special leave petition in this behalf. However, SLP (C) Nos. 19336-19337 of 2015 has been filed challenging that order as well as the order which was subsequently passed dismissing the review petition of the appellant against the said order, which special leave petition is taken up along with the present appeal.

10. The matter went for trial. In order to prove that the appellant was the adopted son of late Hira Lal, the appellant summoned the record of the Sub-Registrar to bring on record adoption deed dated 29.03.1974. When the official of the office of the Sub-Registrar came with the record to the Court, the respondent raised objection to the admissibility of the said adoption deed on the ground that it was beyond the pleadings and, therefore, could not be admitted in evidence. This objection of the respondent was accepted by the trial court and the trial court refused to take the said document on record stating that it was beyond the pleadings inasmuch as it was nowhere pleaded by the appellant in the plaint that he was the adopted son of Hira Lal. The appellant challenged the aforesaid order of refusal passed by the trial court by filing Writ Petition No. 1760 of 2015, but unsuccessfully, as the said writ petition has been dismissed by the High Court vide orders dated 15.04.2015. The High Court while dismissing the writ petition has taken note of the earlier attempt made by the appellant seeking amendment of the pleadings by specifically taking up the plea that he was the adopted son of late Hira Lal which was not allowed.

11. On that basis, the High Court has opined that the plaint of the appellant is inconsistent in nature when the appellant had failed in its attempt to seek the amendment, and if the adoption deed is admitted in evidence it would tantamount to filling up the lacuna which was not permissible. It is this order, validity whereof is impugned in the present etc. proceedings.

11. The first question that arises for consideration is as to whether there was any pleading in the plaint filed by the appellant to the effect that the appellant was the son of late Hira Lal. We say so because of the reason that the main ground on which the document is not admitted in evidence is that the same goes beyond the pleadings. We have already reproduced paragraph 5 of the plaint hereinabove. A reading thereof squarely demonstrates that the appellant had in no uncertain terms claimed that he was the only son of late Hira Lal and the only legal heir who was alive after the demise of Hira Lal, Mahadev Prasad, Kesar Devi and Shanti Devi. There cannot be any dispute on this in view of the aforesaid specific pleadings. The controversy which is sought to be raised is that the appellant-plaintiff has never claimed that he was the adopted son, which claim was sought to be made by the amendment of the plaint and this attempt of the appellant had failed.

12. We are of the view that once the plaintiff has mentioned in the plaint that he was the only son of late Hira Lal, it was not necessary for him to specifically plead that he was an adopted son. Section 3(57) of the General Clauses Act, 1897 defines 'son' as under:

> "' son' in the case of any one whose personal law permits adoption, shall include an adopted son;"

13. Once the law recognizes adopted son to be known as son, we fail to understand why it was necessary for the appellant to plead that he was the adopted son. His averment to the effect that he was the only son, according to us, would be sufficient to lay the claim of inheritance on that basis. No doubt, the respondent has denied the appellant being the son of late Hira Lal. It is for this reason, the appellant wants to prove that he is the adopted son and in support of this plea, the appellanthad summoned the original of Adoption Deed dated 29.03.1974 from the office of Sub-Registrar.

14. It may also be kept in mind that the appellant, in order to prove his claim, is relying upon a document which is a public document and was purportedly registered more than 40 years ago, i.e., in the year 1974.

15. There was no justifiable reason for the trial court to reject the aforesaid plea in view of the provisions of Section 3(53) of the General Clauses Act. In fact, it was not even necessary for the appellant to move an application under Order VI Rule 17 of the Code of Civil Procedure, 1908, with an attempt totake a specificplea that he was the adopted son as, we say at the cost of repetition, his plea to the effect that he was the son of late Hira Lal was an adequate plea and to prove that he was the son, he could also place on record the document, i.e., the adoption deed in the instant case, to show that he was the adopted son. Therefore, the dismissal of application for amendment filed by the appellant on the earlier occasion would be inconsequential, though we may hasten to add that the High Court was not entirely justified in rejecting the application on the ground that his plea that he was the adopted son was inconsistent with the earlier plea. We do not see any such inconsistency. Be that as it may, we are of the view that it was not even necessary to seek an amendment of the plaint and, thus, we leave the matter at that.

16. The upshot of the aforesaid discussion is to allow this appeal by setting aside the impugned judgment of the High Court as well as the order of the trial court refusing to admit the document, i.e., the adoption deed dated 29.03.1974, in evidence. The appellant shall be permitted to summon the said record again.

17. We may make it clear and clarify that we have not stated anything about the genuineness or otherwise of the adoption deed dated 29.03.1974. The admissibility thereof shall be subject to the rule of proof that is required under the Evidence Act.

18. It also goes without saying that the counter claims of the respondent here are also to be decided by the trial court in accordance with law.

19. Since the suit is of the year 2007, we impress upon the trial court to expedite the hearing and decision thereof.

20. In view of the aforesaid order passed in Civil Appeal No. 4456 of 2016 (arising out of SLP (Civil) No. 16486 of 2015), no orders are required to be passed in SLP(C) No. 19336-19337/2015 and S.L.P.(C)...CC No. 19118/2015 and the same stand disposed of.