
(2016) 03 BOM CK 0173
In the Bombay High Court
Case No : Writ Petition No. 909 of 2015

Antonio Teodoro Marques

APPELLANT

Vs

Eleuterio Socorro Marques alias Socorro El. Marques

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226

Citation : (2016) 5 BCR 83

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Mr. John Abreu Lobo, Advocate, for the Petitioner; Mr. Rohit Bras de Sa, Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.V. Bhadang, J. (Oral)—Rule. Rule made returnable forthwith. Mr. Rohit Bras de Sa, learned Counsel waives service on behalf of the respondent. Heard finally, by consent of the parties.

2. By this petition, the petitioner, who is the original plaintiff is challenging the order dated 31.08.2015, passed by the learned Civil Judge Junior Division at Panaji in Regular Civil Suit No. 121/2011/D. By the impugned order, the application (Exhibit-26) filed by the petitioner for amendment of the plaint has been dismissed.

3. The brief facts are that the petitioner has filed the aforesaid suit for declaration that the earlier oral partition of the suit house and the suit property and the present use, occupation, possession and the allotted parts and common use of the other parts thereof is legal, valid and binding on them. The petitioner has also prayed for injunction etc. Undisputedly, the parties are yet to lead evidence in the suit.

4. The petitioner filed an application (Exhibit-26) for amendment of the plaint

proposing to incorporate paragraph 4-A and also paragraph 16(cc) in the prayer clause. A perusal of the paragraph 4-A shows that the petitioner is now claiming that he was required to incur expenses on account of payment of utility bills and for maintenance of the house for a period of over 30 years. Hence, the petitioner intends to claim 50% reimbursement of such expenses amounting to Rs.3,18,950/-.

5. The application was opposed on behalf of the respondent/defendant.

6. The learned trial Court came to the conclusion that the amendment would be barred by time and also that the trial had commenced. It was also found that the proposed amendment would change the nature of the suit. The learned trial Court placed reliance on the decision of this Court in the case of Ashok Vaz v. State of Goa, (2014) Law Suit (Bom) 414, in order to hold that the trial commences when the issues are framed. In that view of the matter, the application came to be dismissed.

7. The learned Counsel for the petitioner has placed reliance on the decision of the Hon"ble Apex Court in the case of Baldev Singh and Others v. Manohar Singh and Another, (2006) 6 SCC 498 and the decision of the Madras High Court in the case of Hi. Sheet Industries v. Litelon Limited, LAWS(MAD)-2006-12-69. It is submitted that reliance placed by the learned trial Court on the decision of this Court in the case of Ashok Vaz (supra), in order to hold that trial had commenced, is not correct. It is submitted that the claim towards maintenance and utility expenses being a continuing claim cannot be said to be barred by limitation.

8. The learned Counsel for the respondent has supported the impugned order. It is submitted that on their own saying, the plaintiff is claiming 50% of the expenses incurred on maintenance and utility bills for a period of 30 years and thus, the finding recorded by the learned trial Court that the amendment would be barred by limitation, would be correct.

9. I have considered the rival circumstances and the submissions made. At the outset, it is necessary to mention that, in view of the decision of the Hon"ble Supreme Court in the case of Baldev Singh (supra), commencement of trial must be understood, as final hearing of the suit i.e. examination of the witnesses, filing of documents, addressing of arguments etc. In the present case, the plaintiff is yet to start the evidence and thus, it cannot be said that the trial has commenced. Therefore, the proviso to Order 6, Rule 17 of the Civil Procedure Code, would not come into play.

10. Insofar as the objection based on the claim being barred by limitation is concerned, I find that the claim to the extent of a period beyond 3 years, next prior to the filing of the suit cannot be allowed. The claim in respect of such reimbursement for a period of 3 years, next prior to the filing of the suit, can be allowed to be incorporated.

11. In such circumstances, the following order is passed:

ORDER

- (a) The petition is allowed.
- (b) The impugned order dated 31.08.2015, is hereby quashed and set aside.
- (c) The application for amendment (Exhibit-26) is partly allowed to the extent of allowing the amendment towards 50% of reimbursement towards payment of utility bills and maintenance for a period of 3 years, next prior to the filing of the suit.
- (d) The learned trial Court shall allow the amendment to the aforesaid extent, to be carried out in the plaint.
- (e) It is needless to mention that the respondent shall be entitled to carry out, appropriate consequential amendment in the written statement.
- (f) Rule is made absolute, in the aforesaid terms, with no order as to costs.