

(2018) 03 RAJ CK 0182

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12828 of 2016

Jammaludin @APPELLANT@Hash Fazlu Rehman

Date of Decision : 13-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 03 RAJ CK 0182

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : J.Gehlot, N.R.Choudhary

Final Decision : Dismissed

Judgement

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

â??(i) the impugned order dated 20.09.2016 i.e. Annexure-11 be set aside.

(ii) The application of the petitioner under Order 6 Rule 17 CPC be allowed.

(iii) Any other relief for which the petitioner is entitlebe given.

Â It is therefore, prayed that this writ petition of the petitioner be allowed with costs.â??

2. The petitioner was facing a suit for specific performance of contract, which was filed against his Late father, Mohd. Usman alongwith two uncles.

The suit for specific performance was for execution of a sale agreement, in respect of a house situated at Ghasmandi, Jodhpur measuring 27 x 13 feet

with the consideration of Rs.21,00,000/-, and the same was dated 19.02.2011. On the death of Mohd. Usman on 21.03.2014, the petitioner was

impleaded as defendant in the said suit, being legal representative of his father. As legal representative, the petitioner had already filed his written

statement.

3. The petitioner/defendant has now moved an application under Order 6 Rule 17 CPC seeking amendment in the written statement pertaining to a

previous agreement being done between the parties on 11.05.2007, which was much prior to the agreement in question i.e. dated 19.02.2011.

4. Learned counsel for the petitioner has stated that once the petitioner has inherited the property in question from his father and has been taken on

board as legal representative, then it was open for him to contest the case on his own parameters with his own legal proposition.

5. Learned counsel for the petitioner relied upon the precedent law laid down by the Honâ??ble Apex Court in Raj Kumar Bhatia Vs. Subhash

Chander Bhatia, reported in 2018 DNJ (SC) 1, relevant portion of which reads as under:-

â??11. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the

written statement. The High Court has in the exercise of its jurisdiction Under Article 227 of the Constitution entered upon the merits of the case

which was sought to be set up by the Appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent

on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the

limitations on its jurisdiction Under Article 227. In *Sadhna Lodh v. National Insurance Co.* : (2003) 3 SCC 524, this Court has held that the supervisory

jurisdiction conferred on the High Court Under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the

parameters of its jurisdiction. In the exercise of its jurisdiction Under Article 227, the High Court does not act as an appellate court or tribunal and it is

not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered

exercise of its jurisdiction allowed the amendment of the written statement Under Order 6 Rule 17 of the Code of Civil Procedure. There was no

reason for the High Court to interfere Under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in

the written statement (as submitted by the Respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary

to note that it was on 21 September 2013 that an amendment of the plaint was allowed by the Trial Court, following which the Appellant had filed a

written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the Plaintiff.â??

6. Learned counsel for the petitioner also stated that the earlier agreement dated 11.05.2007 was relevant for adjudication of the dispute, and

therefore, if the amendment sought for is not allowed, then it is likely to cause prejudice to the adjudication of the suit in question.

7. Learned counsel for the respondents however, opposed the aforesaid submissions made on behalf of the petitioner on the ground that the suit for

specific performance was instituted against Late father of the petitioner, and his father had already filed a categorical written statement regarding the

agreement dated 19.02.2011.

8. Learned counsel for the respondents has further pointed out that not a whisper about the agreement dated 11.05.2007 has been made by Late

father of the petitioner, who was signatory to the agreement, and in fact, the suit for specific performance was actually instituted against father of the

petitioner. However, it is only a coincidence that the petitionerâ??s father is no more and the petitioner has been impleaded as legal representative of

his Late father.

9. Learned counsel for the respondents has further argued that a separate written statement has been filed by the petitioner, and therefore, no further

indulgence, particularly, under Order 6 Rule 17 CPC ought to be granted.

10. After hearing learned counsel for the parties and perusing the record of the case alongwith the precedent law cited at the Bar, this Court finds that

the agreement dated 19.02.2011 was the cause of filing of the aforementioned suit for specific performance by the respondents against Late father of

the petitioner and on death of his father, the petitioner was impleaded as legal representative, and thus, since the legal representative was not the

signatory to the agreement, therefore, the petitioner cannot go beyond the pleadings, which have already been brought on record by his Late father,

being signatory to the agreement dated 19.02.2011. However, in the interest of justice, since the learned court below has already given the petitioner

an opportunity to file separate written statement, therefore, at this stage, it would not be appropriate to grant any further indulgence, particularly, under

Order 6 Rule 17 CPC.

12. The precedent law cited by learned counsel for the petitioner also does not render any help to the petitioner,

13. Consequently, the present writ petition is dismissed.