

(2008) 08 RAJ CK 0053
In the Rajasthan High Court

Kedar Nath Methi

APPELLANT

Vs

Mithan Lal (Since deceased) through his Legal
Representatives Smt. Saraswati Devi and Others

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 227

Citation : (2008) 4 RLW 3593

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Admit. Mr. Banwari Sharma, advocate appears for respondents.

2. Heard learned Counsel for the parties.

3. The sole plaintiff Mithan Lal filed a suit for ejection in respect of disputed property against defendant petitioner on the ground of personal bonafide necessity of himself and default in making the payment of rent. During the pendency of the suit, the sole plaintiff Mithan Lal died and thereafter his legal representatives were substituted in his place. The legal representatives moved an application under Order 6 Rule 17 CPC for amendment in the plaint pleading the bonafide necessity of Smt. Saraswati Devi, widow of Mithan Lal, of the disputed premise. The application was contested by the defendant. The trial court vide its order dated 30th October, 2007 allowed the application. Being aggrieved with the same, the present writ petition has been preferred on behalf of the defendant petitioner.

4. The learned Counsel for the petitioner contended that earlier suit was filed on the basis of personal bonafide necessity of sole plaintiff Mithan Lal and after his death, the cause of action does not survive and suit is liable to be dismissed, therefore, amendment sought in the plaint should not have been allowed by the

trial court. In support of his contention he referred Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, and Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co.,

5. The learned Counsel for the respondents contended that the present suit was filed for eviction not only on the ground of personal bonafide necessity of Mithan Lal - sole plaintiff, but also on the ground of default in making the payment of rent and after the death of Mithan Lal, his legal representatives have already been substituted, therefore, the judgment of Hon''ble Apex Court in the case of Smt. Phool Rani v. Shri Naubat Rai which has been delivered on the basis of the facts and circumstances of that case, as mentioned in para 20, is not applicable in the present case. He contended that so far as default in making the payment of rent is concerned, the cause of action remains the same and so far the personal bonafide necessity of legal representative Smt. Saraswati Devi is concerned, the same can be incorporated in the plaint by way of an amendment under Order 6 Rule 17 CPC. In support of his submission he relied upon Pradeep Kumar Paliwal v. LRs of Mitha Lal and Anr. 2008 (1) DNJ (Raj.) 68 ; Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, ; Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others,

6. I have considered the submissions of learned Counsel for the parties and examined the impugned order. The sole plaintiff Mithan Lal filed the present suit for eviction in the year 1998 for his personal bonafide need as well as default in making the payment of monthly rent. The written statement was filed in the case, issues were framed, plaintiff closed his evidence and matter was pending for defendant's evidence and at that stage the sole plaintiff Mithan Lal died on 6th December, 2006. An application for substitution of legal representatives was filed and the same was allowed. The legal representatives filed an application under Order 6 Rule 17 CPC on 12th April, 2007 in the trial court pleading necessity of Smt. Saraswati Devi, one of the legal representative of deceased Mithan Lal. The trial court allowed the said application vide order dated 30th October, 2007 which is impugned in this writ petition.

7. In Smt. Phool Rani's case (supra), the Hon''ble Apex Court in the facts and circumstances of the case held that legal representatives of landlord (since deceased) cannot continue the suit for ejectment filed by landlord on the ground of personal requirement. Para 11, 12 and 20 of the said judgment are reproduced as under:

11. Thus, the requirement pleaded in the ejectment application and on which the plaintiff has founded his right to relief is his requirement, or to use an expression which will effectively bring out the real point, his personal requirement. If the ejectment application succeeds - we will forget for a moment that the plaintiff is dead - the premises in the possession of the tenant may come to be occupied by the plaintiff and the members of his family but that does not make the requirement pleaded in the application any the less a personal requirement of the plaintiff. That the members of his family must reside with him is his

requirement, not theirs. Such a personal cause of action must perish with the plaintiff.

12. If the appellants were permitted to continue the proceedings, the lis will assume a complexion wholly beyond the compass of the original cause of action. Indeed, it is difficult to see how, without a fundamental alteration of the pleadings, appellants could continue the proceedings. Such an alteration will fall beyond the scope of amendment of pleadings permissible under a most liberal interpretation of Order 6, Rule 17 of the Code of Civil Procedure. Plaintiff, who owned the premises, was entitled u/s 14(1) (e) of the Act to ask for possession thereof on the ground that his wife and the other members of his family dependent on him must live with him but that there was not enough space at his disposal to accommodate them. Section 14(1) (e) provides to the extent material for the present purposes, that the Controller may make an order for possession on the ground "that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof _____ and that the landlord _____ has no other reasonably suitable residential accommodation". If the plaintiff were alive, the main issues for determination in the ejectment proceedings would have been; (1) whether the plaintiff requires the premises for his occupation and for the occupation of his wife, son, daughter-in-law and 3 grand-children; (2) whether the aforesaid requirement is bona fide and (3) whether the plaintiff has no other reasonably suitable residential accommodation. The appellants' emergence in the proceedings will require the determination of wholly different and distinct issues. Their requirement, not that of the plaintiff, and the availability to them - not to the plaintiff - of other reasonably suitable residential accommodation will now form the centre of conflict. It is relevant on this aspect to remember that amongst the appellants are 2 married daughters of the deceased plaintiff and 2 children of a deceased daughter of his. Their requirement would be basically different from that of the plaintiff and an examination of facts and circumstances in regard thereto will open up a new vista of inquiry. The plaintiff's right to sue will therefore not survive to the appellants and they cannot glean the benefit of the original right to sue.

20. We have referred to some of the decisions in the three categories, not with a view to determining their correctness but only in order to show that they rest on different principles or could be explained in reference to such principles. We are concerned with a matter not involving the application of any of those principles. For reasons already stated, we are of the view that considering the nature of the claim made in the instant case and the bundle of facts which constitute the plaintiff's cause of action, his right to sue will not survive to his legal representatives.

8. In Raghunath G. Panhale's case (supra), the Hon'ble Apex Court considered the aforesaid Smt. Phool Rani's case (supra) in para 12 and 13 and thereafter in para 14 the Hon'ble Apex Court allowed the amendment under the similar

circumstances in the pleading. Para 12, 13 and 14 of the judgment are reproduced as under:

12. Learned Counsel for the respondent, however, raised another point regarding abatement and relied upon *Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, , to contend that while the matter was in the trial court, the original plaintiff died, that the cause of action based on his bona fide requirement ceased to exist and the suit could not have been continued by his heirs. This was because the original plaintiff's requirement would not be the same as that of his heirs. It is true, the above judgment does support the above contention. On the main point, the above decision was overruled in *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, , where it was held that if the original plaintiff pleaded that it was his own need and that of family members, the cause of action would survive on his death, to his heirs. In *Shantilal's* case, it was pointed out that if the landlord claimed possession on the ground of bona fide requirement for himself and his family members, his family members could continue the same eviction case, after the landlord's death, without amendment since the cause of action would survive to them.

13. Now, it is true that in *Phool Rani*, there was no amendment application by the heirs of the deceased landlord while in the case before us, an amendment application was filed by the heirs and was allowed, putting in issue, their own requirement. It is also true that in *Phool Rani*, no amendment application was filed and allowed, but there are still observations that, the plaint cannot be amendment for putting in issue the requirement of the heirs inasmuch as the cause of action will be different.

14. Be that as it may, now the question before us is whether when relief for eviction was retained in the amendment and the plaint was amended at the instance of the heirs to put in issue their own requirement and when voluminous evidence was led on both sides and findings given on merits, the question is whether we should at this distance of time hold on basis of *Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, that the amendment was wrongly allowed and drive the heirs to a fresh suit after thirteen years. The eviction case was filed in 1986 and we note that the tenant had full opportunity to meet the case of the heirs as per the amended pleading. In our view, they suffered no prejudice whatsoever because of the amendment. We, therefore, think that in our discretion, we should not drive the heirs to file a fresh suit on the plea that the amendment was wrongly allowed. We, therefore, in our discretion under Article 136, do not permit this point to be raised by the respondent.

9. In *Pradeep Kuamr Paliwal's* case (*supra*), this Court in similar circumstances allowed the amendment in the plaint. Para 9 of the judgment is reproduced as under:

When a fresh petition can be filed by the party to the suit, then normally the suit or the petition cannot be dismissed on the ground that fresh petition or suit be

filed and in that situation, normally amendments are allowed to avoid the multiplicity of the proceedings. In view of the above reasons also, after the death of the original applicant, if the cause accrued in favour of the successor or heirs or deceased for seeking same relief against the same party, then the amendment can be allowed and, therefore, that was rightly allowed by the Rent Tribunal.

10. In Rajesh Kumar Aggarwal's case (supra), Hon''ble Supreme Court held that courts should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. Para 17 of the judgment is reproduced as under:

In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

11. In Usha Balashaheb Swami's case (supra), the Hon''ble Apex Court while interpreting the provisions of Order 6 Rule 17 CPC held that from a bare perusal of Order 6 Rule 17, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. Para 17 and 18 of the above judgment are reproduced as under:

17. From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

18. It is now well settled by various decisions of this Court as well as those by the High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this connection, the observation of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* may be taken note of. The Privy Council observed: (IA

All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subjectmatter of the suit.

12. In Smt. Phool Rani's case, the Hon''ble Apex Court considered the facts and circumstances of that case and came to a conclusion that legal representative of landlord cannot continue a suit for ejectment filed by landlord on the ground of personal requirement after his death. The Hon''ble Apex Court in Raghunath G. Panhale's case considered the aforesaid judgment in Smt. Phool Rani's case and held that the eviction case was filed in 1986 and we note that the tenant had full opportunity to meet the case of the heirs as per the amended pleading. In our view, they suffered no prejudice whatsoever because of the amendment. We, therefore, think that in our discretion, we should not drive the heirs to file a fresh suit on the plea that the amendment was wrongly allowed. In Pradeep Kumar Paliwal's case (supra), this Court held that when a fresh petition can be filed by the party to the suit, then normally the suit or the petition cannot be dismissed on the ground that fresh petition or suit be filed and in that situation, normally amendments are allowed to avoid the multiplicity of the proceedings. The Hon''ble Apex Court in Rajesh Kumar Aggarwal's case (supra) in para 17 categorically held that we fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit. The Hon''ble Supreme Court in Usha Balashaheb Swami's case (supra) held that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side.

13. So far as the facts of the present case are concerned, there is no dispute in between both the parties that present suit for eviction was filed way back in the year 1998 by sole plaintiff Mithan Lal. The suit remained pending for about 8 years when Mithan Lal died in December, 2006. The Hon''ble Supreme Court in Rajesh Kumar Aggarwal's case (supra) has categorically held that we fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed or in the new suit cannot be permitted to be incorporated in the pending suit.

14. In view of above discussion, I do not find any force in the contention of the learned Counsel for the petitioner. I do not find any illegality, perversity or jurisdictional error in the impugned order so as to interfere with the same while exercising the powers under Article 227 of the Constitution. There is no merit in this writ petition and the same is, accordingly, dismissed with no order as to costs.