
(1974) 04 PAT CK 0008
In the Patna High Court
Case No : A.F.A.D. No. 562 of 1970

Lakshmi Sao and Another

APPELLANT

Vs

Swaroop Chand Jain and Another

RESPONDENT

Date of Decision : 30-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1974 Patna 378

Hon'ble Judges : H.L. Agarwal, J

Bench : Single Bench

Advocate : K.D. De and Prashant Vedasen, for the Appellant; Jagdish Chandra Sinha, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agarwal, J.—This second appeal is by the defendants. The plaintiffs-respondents filed a title suit, initially seeking a relief for a declaration to the effect that plaintiff No. 1 was the purchaser of a truck bearing Registration No. BRM 4449, having purchased the same in the name of plaintiff No. 2, his brother, and the defendants had no right, title and interest over the same. This truck was originally purchased by defendant No. 1 under a hire-purchase agreement from Messrs. B.P. Agarwalla of Dhansar in the year 1959. He made some defaults in payment of the monthly instalments and a sum of Rupees 4,300/- remained due under the said agreement. The said financier, in exercise of its power of seizure, seized "the truck in question. The defendant No. I. thereafter, negotiated for sale of the truck with the plaintiffs and ultimately, it is said, the plaintiffs agreed to purchase the same for a sum of Rs. 8,001/-. Out of this agreed amount a sum of Rs. 4,300/- was paid by the plaintiffs to the said financier by a cheque on 4-10-1961 and the balance of Rs. 3,701/- was paid to defendant No. 1 then and there in cash, and the truck having been released, it was delivered to the plaintiffs. The plaintiffs' further case was that on 22-12-1961, the defendant No. 1 illegally took away the said truck. A criminal case under Sections 379 and 411

of the Indian Penal Code was instituted against the defendants for theft of the vehicle, but ultimately it ended in their acquittal. The plaintiffs alleged that in view of the acquittal of the defendants, a cloud was cast on their title over the truck. The suit, as already stated above, was filed on 27-4-1964 for a declaration on payment of a mere declaratory court-fee.

2. The suit was contested by defendant No. 1 alone by filing a written statement, in which the entire case of the plaintiffs was denied and it was specifically alleged that he had never entered into any transaction with the plaintiffs nor the plaintiffs had made any payment.

3. The suit was taken up for hearing on 19-4-1966. On 1-10-1966, when the plaintiffs had closed their case and the witnesses on behalf of defendant No. 1 were being examined, the plaintiffs filed a petition for amendment of the plaint by adding a relief for recovery of possession of the truck from the possession of the defendants and, in the alternative, for recovery of the price of the said truck, namely, the sum of Rs. 8,001/-. It was stated in the said petition itself that in absence of the said relief "the suit will become infructuous. In case of an eventual decree of declaration of his right the plaintiff will get a fruitless decree and a bag of winds." The prayer for amendment of the plaint was opposed by the defendant No. 1. By order dated 4-10-1966, the learned Additional Subordinate Judge however without assigning any reason, allowed the amendment. Thereafter ad valorem court-fee was paid by the plaintiffs on this amount of Rs. 8,001/-.

4. The trial Court held that the plaintiffs were entitled to a decree for Rs. 4,300/- only from defendants 1 and 2, the amount which was alleged to be paid to the aforesaid financier by a cheque, and their claim for the balance of Rs. 3,701/- was rejected. No appeal was filed by the plaintiffs against the said decision. Defendants 1 and 2, however filed an appeal against the decree passed against them. The learned Additional District Judge affirmed the finding of the trial Court and held that the sum of Rs. 4,300/- was paid by the plaintiff No. 1 to the company of Sri B.P. Agarwalla, the financier, by a cheque on behalf of defendant No. 1 (wrongly stated in paragraph 17 of the judgment as on behalf of plaintiff No. 1). The defendants have, therefore, filed the present second appeal.

5. Mr. K.D. De appearing for the appellants has challenged the decisions of the Courts below on two grounds; namely. (i) the trial Court ought not have allowed the amendment of the plaint which took away a right accrued to the defendants by lapse of time and which could not be compensated by costs, and (ii) the relief for money decree was barred by limitation.

6. According to the provisions of Order 6, Rule 17 of the Code of Civil Procedure, "a Court is empowered to allow amendment at any stage of the proceedings in such manner.....as may be necessary for the purpose of determining the real question in controversy between the parties."

From the facts stated, it is manifest that the plaintiffs went to Court essentially with an intention to secure the possession of the truck itself on a mere declaration that plaintiff No. 1 was the real purchaser of the said truck. This case of the plaintiffs has not been accepted by the trial Court. The amendment introduced on 4-10-1966 claiming, in the alternative, for recovery of the price of the said truck having been advanced on 4-10-1961. was obviously barred by limitation, i.e., a suit for recovery of either the sum of Rupees 4,300/- paid by the plaintiffs by a cheque to the Company of Sri B.P. Agarwalla, or the sum of Rs. 3,701/- alleged to have been paid to defendant No. 1 on 4-10-1961, was obviously barred by limitation on the date of the amendment. This amendment was also not necessary at all for the purpose of determining the real question in controversy between the parties, as it was introduced in the plaint. The relief sought for by the amendment was, therefore, not an alternative relief simpliciter in the sense that on failure of the plaintiffs to get the main relief, the Court could grant them the alternative relief. In this case, if the plaintiffs would have succeeded in proving that the truck in question was really purchased by them, the Court could only direct for recovery of the truck, and the consideration paid by them for the purchase of the truck in question could not have been decreed in their favour. But their case of purchase of the truck from defendant No. 1 was not accepted by the Court, and, therefore, it could not have granted a decree for money either to them. In these circumstances, it appears to me that the claim of the plaintiffs for money was a substantive and independent claim and exactly the Courts below also passed a decree for Rs. 4,300/- in their favour on a simple finding that defendant No. 1 actually paid to the Company of Sri B.P. Agarwalla the amount due under the hire-purchase agreement, out of the money borrowed from the plaintiff No. 1. In my view, therefore, the trial Court was not justified in allowing the amendment of the plaint as the amendment put the defendants to such a disadvantageous and precarious position that it could not be compensated in the circumstances by any amount of costs. This Court in the case of Kamakhya Narain Singh Vs. State of Bihar, has clearly laid down that all amendments adding a new relief should not be allowed at a stage when the claim has become barred by limitation. The Supreme Court in the case of Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, has also clearly laid down that all amendments ought to be allowed which satisfy two conditions (i) of not working injustice to the other side, and (ii) of being necessary for the purpose of determining the real question in controversy between the parties, and such amendments where the other party cannot be placed in the same position as if the pleading would have been originally correct, but the amendment would cause him an injury which could not be compensated in costs, should be refused, and where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused, as to allow it would be to deprive him of a good defence to the claim.

7. As stated above, the facts of the present case are fully covered by the

principles laid down by the above authorities, I would, accordingly allow this appeal, set aside the judgment and decree of the Courts below and dismiss the plaintiffs suit. In the circumstances of the case, there will be no order as to costs.