
(2018) 06 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 18 OF 2018

MAHESH SINGH JAMWAL

APPELLANT

Vs

SHEIKH MOHD.ASLAM AND ANR

RESPONDENT

Date of Decision : 05-06-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2018) 06 J&K CK 0011

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. At the outset, learned counsel for the petitioner submits that he has inadvertently filed the revision petition against the order dated 18.5.2018 passed by the learned 3rd Additional Munsiff, Jammu (hereinafter referred to as "The Trial Court") whereby the application of the respondents seeking

amendment of the written statement, has been allowed . He further submits that the order impugned is not revisable under Section 115 of the Code

of Civil Procedure, as such the revision petition filed by him, may be treated as petition under Section 104 of the J&K State Constitution .

2. After going through the contents of the revision petition, I found that sufficient foundation has been laid for invocation of supervisory jurisdiction of

this Court. Accordingly, the prayer of the petitioner is accepted and this petition is treated as petition under Section 104 of the J&K State Constitution.

This, however, is without prejudice to right of respondents to claim that the order impugned is not amenable to be corrected in exercise of supervisory

jurisdiction vested in this Court under Section 104 of the J&K State Constitution.

3. The petitioner claiming to be the owner in possession of land measuring 3 kanals 3 Marlas comprised in Khasra No. 403 min(2 kanals 8 marlas

) and Khasra No. 401 min (5 marlas) situated at revenue village Chowadi, filed a suit for permanent prohibitory injunction before the Trial Court

seeking to restrain the respondents from interfering in any manner over the aforesaid plot of land on the basis of a cause of action accrued to the

petitioner on 29.9.2016 when the respondents collected the building material on the spot and started raising construction. The suit was resisted by the

respondents by filing written statement. The respondents in paragraph No. 4 of the written statement pleaded that respondent No. 2 had raised the

plinth for construction of wall over the plot of land comprised in Khasra No. 401 min. It was also claimed that the respondent No.2 and his brother

were in occupation of land measuring 10 kanals 1 marla in the aforesaid khasra number. It appears that after filing written statement, respondents

realized their mistake when Commission appointed by the Trial Court submitted its report after demarcation indicating therein that the respondents had

raised construction of the plinth in Khasra No.403 min. a

4. With a view to correct the mistake and set the record straight, the respondents filed an application under Order VI Rule 17 seeking permission of

the Trial Court to amend the written statement so as to plead that the respondents were in possession of property comprised in Khasra No. 401 and

403 min and sought the permission of the Trial Court to recast paragraph Nos. 1 to 4 of preliminary objections and paragraph No. 1 of the written

statement.

5. The application filed by the respondents(defendants) was resisted by the petitioner (plaintiff) inter alia on the ground that amendment sought by

the respondents amounts to withdrawal of admission which cannot be permitted. It was pleaded that amendment sought by the respondents in written

statement would not only change the complexion of defence but would introduce altogether different facts which are contradictory to the reply already

filed by way of written statement. The matter was considered by the Trial Court and vide its order dated 18.5.2018, the application filed by the

respondents was allowed and respondents were permitted to amend written statement by stating therein that they had raised construction of plinth

over khasra No. 403 instead of Khasra No. 401 and accordingly the proposed

amended written statement which was submitted to the Trial Court was taken on record. It is this order of the Trial Court which is assailed before this Court by invoking the supervisory jurisdiction. Â

6. Having heard learned counsel for the parties, I am satisfied that there is no legal infirmity in the order which may call for interference by this Court

in exercise of its supervisory jurisdiction vested in terms of Section 104 of the J&K State Constitution . Exercise of supervisory jurisdiction to correct

the discretionary orders of the courts subordinate to the High Court is very limited and circumscribed by the set parameters of law enunciated in

various pronouncements of the Apex Court.

7. The contention of the learned counsel for the petitioner that the order impugned has been passed by the Trial Court in flagrant violation of the

established principles of law and has thus, occasioned failure of justice, is without any substance. With a view to examine as to whether the

amendment of the written statement as permitted by the Trial Court, has the effect of allowing the respondents to withdraw the admission made in the

written statement, I have carefully examined the plaint and the written statement. As is apparent from the case set up by the petitioner in his plaint, the

petitioner is claiming to be owner in possession of land measuring 3 kanals 3 marlas comprised in khasra Nos. 401 and 403 min situated at revenue

village Chowadi . His grievance against the respondents is that they are interfering in the aforesaid land without having right, title or interest. In

paragraph No. 7 of the plaint, the petitioner while disclosing cause of action, has stated that the respondents have collected building material for raising

construction of the wall over the land belonging to the petitioner. In short, the petitioner has alleged interference on his plot which is comprised in

Khasra Nos. 401 and 403 min. In the written statement filed by the respondents, it is claimed that respondent No. 2 has purchased the land comprised

in Khasra Nos. 401 and 403 min and other khasra numbers at village Chowadi . In paragraph No. 4 of the brief facts, the respondents have further

pleaded that respondent No.2 and his brother are in occupation of the land measuring 10 kanals and 1 marla comprised in Khasra No. 401 min, where

they have laid plinth for construction of wall.

8. Going by the averments made in the plaint and in the written statement, it cannot, by any stretch of reasoning, be said that the respondents have

admitted any factual averment made in the plaint. The respondents have not admitted that they are interfering in any part of the land possessed by the petitioner. Needless to say that the fact asserted by one party and not denied by the other party, would alone amount to admission. Reading of paragraph No. 1 and 4 of the brief facts of the written statement would make it clear that the respondents have not admitted any of the fact asserted by the petitioner in his plaint. That being so, the amendment sought by the respondents to the written statement to the extent indicated above, does not in any manner, amount to withdrawal of any admission made in the written statement. As a matter of fact, the amendment sought is clarificatory/ explanatory in nature. The report of the Commissioner submitted pursuant to the direction of the Trial Court has introduced ambiguity which the respondents have sought to clarify by way of amendment.

9. It is not in dispute that the respondents in the written statement have pleaded that they are owner in possession of the land falling inter alia in khasra

Nos. 401 and 403. The only difference is that in the written statement filed, the respondents, it is claimed that they were raising plinth for construction

of the wall in khasra No. 401 and by way of written statement, they have sought to plead that it is being done on khasra No. 403. Whether the

respondents are raising construction of the boundary wall in khasra No. 401 or in khasra No. 403, is a question of fact which would require

determination in the trial. It is petitioner who has alleged interference by the respondents on his land comprised in khasra Nos. 401 and 403 and,

therefore, it would be for him to establish his case during the trial to be conducted by the Trial Court.

10. It is now, beyond the pale of judicial uncertainty that amendment to the pleadings can be allowed to raise plea which is even contradictory or

inconsistent. Under Order VI Rule 17 of the CPC, amendment to the pleadings may be permitted by the Court at any stage of the proceedings, if it

finds the same necessary for determining the real question in controversy and for effective adjudication of the lis. First part of provision provides

that this power of the Court can be invoked by either party at any stage of the proceedings and the second part provides that only such amendment

would be allowed which is necessary for effective adjudication of real controversy between the parties. It is axiomatic that even if there are some

admission made in the written statement, it will still be open to the defendant to explain the same by filing application for amendment of the written

statement though whole hog withdrawal of admission may not be permissible.

11. In case *M/s Â Modi Spinning and Weaving Mills Co. Ltd. And Another Vs M/s Ladha Ram Co.* (1976) 4 SCC 320, the Supreme Court while

clarifying the position with regard to law of amendment of pleadings clearly enunciated that inconsistent or alternative pleas can be made in the written

statement.

12. In view of law laid down by the Supreme Court, it is now well established Â that inconsistent plea can also be raised by the defendants in the

written statement although the same may not be permissible in the case of plaint.

13. In the context of controversy which has arisen in this case, it would be appropriate to take Â note of the observation of the Supreme court Â made

in the case of Â *Baldev Singh and Others Vs Manhor Singh and Another*; 2006 (6) SCC 498. In Paragraph Nos. 7 to 9 of the judgment, it is held thus

:Â Â Â Â

â??7. Before we take up this question for our decision, we must consider some of the principles that govern allowing an amendment of the pleadings.

8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer

for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a

decision of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* (AIR 1922 P.C. 249) in which the Privy Council observed:

All rules of courts are nothing but provisions intended toÂ 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.

9. Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6 Rule 17 of the Code of Civil

Procedure deals with amendment of pleadings which provides that the Court may at any stage of the proceedings allow either party to alter or amend

his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of

determining the real questions in controversy between the parties. From a bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code

of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings

and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore,

in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred

on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While

dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that

delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously. By the Code of Civil Procedure (Amendment) Act, 2002 a

proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the

parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied

that in spite of due diligence, the party could not have raised the matter before the commencement of trial. So far as proviso to Order 6 Rule 17 of the

Code of Civil Procedure is concerned, we shall deal with it later.â??

14. In view of position of law adumbrated hereinabove, it cannot be said that the order impugned passed by the Trial Court suffers from any grave

illegality or has resulted in serious miscarriage of justice. The order impugned having been found to be in consonance with established principles of law

and being otherwise discretionary in nature, cannot be interfered with in exercise of supervisory jurisdiction vested in this court under Section 104 of

the J&K State Constitution.

15. For the reasons stated and the legal position explained above, I find no cause for interference in the order impugned.

Accordingly, this petition is dismissed alongwith IA No. 1/2018.