
(2003) 03 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 617 of 2002

Mangi Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Rajasthan Tenancy Act, 1955 — Section 183, 188, 209, 212

Citation : (2004) 1 RCR(Civil) 598 : (2003) 4 RLW 2172 : (2003) 3 WLC 39

Hon'ble Judges : Anil Dev Singh, C.J.;H.R. Panwar, J

Bench : Division Bench

Advocate : Sangeet Lodha, for the Appellant; B.S. Bhati,A.G.A. and J.R. Beniwal, for the Respondent

Final Decision : Dismissed

Judgement

Panwar, J.—These three appeal are directed against the common order dated 6.8.2002 passed in S.B. Civil Writ Petitions No. 2371/2002, 2372/2002 and 2374/2002 whereby the learned Single Judge dismissed the aforementioned writ petitions. Writ petitioner Mangi Lal has challenged the order of the learned Single Judge in these appeals.

2. We have heard learned counsel for the parties. Perused the order impugned.

3. The facts of all the three appeals are identical and parties are common, therefore, for convenience, facts of D.B. Civil Special Appeal (Writ) No. 617/2002 arising out of S.B. Civil Writ Petition No. 2371/2002 are taken as leading case. Respondents Smt. Suki Bai, Smt. Lata, Vinod and Smt. Chandra Kumari (for convenience hereinafter referred to as "the plaintiff) filed four separate suits u/s 188 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Act") seeking perpetual injunction against the appellant Mangi Lal and respondents No. 5 to 7 (for convenience referred to as "the defendants") in the Court of Assistant Collector, Strohi (hereinafter referred to as "the trial court").

4. Originally Mahesh Chandra S/o Indra Chand Bafna was khatedar of land in respect of Khasra No. 97.5/2 measuring 4 biswas, Khasra No. 974 measuring 7 biswas and Khasra No. 977 measuring 3 bighas and 2 biswas. Plaintiff Smt. Suki Bai purchased the aforementioned land from Mahesh Chandra by a registered sale deed dated 27.3.90. In the record of rights, the title of the land was recorded in the name of the plaintiff. The land was mutated in favour of the plaintiff by revenue authority vide transfer No. 187 dated 5.11.90. On being threatened to be dispossessed by the defendants, the plaintiff filed a suit u/s 188 of the Act for perpetual injunction on 30.12.93. Alongwith the suit, an application u/s 212 of the Act seeking temporary injunction for restraining the defendants from interfering with the possession of the land during the pendency of the suit, was filed. The defendants filed written statement on 3.3.94. Trial Court allowed the application filed by the plaintiff u/s 212 of the Act and passed temporary injunction and the defendants were restrained from, interfering with the possession of the plaintiff. In the written statement the defendants pleaded that the suit land was jointly purchased by defendants Mangi Lal and Deepak Nathan, plaintiff Suki Bai and her husband Bastimal and averred that sum of Rs. 1,55,500/- were paid to Bastimal on 29.3.90 and took the possession of the land in question. It was further averred that one fourth of the holding came in the share of Mangi Lal, one fourth of the holding came in the share of Deepak Nathan and remaining half came in the share of the plaintiff Suki Bai, her son Vinod, daughter-in-law Chanda and Lata. The land stands registered in the name of the plaintiff, was not disputed. However, it was pleaded that the defendant Mangi Lal is in possession of the entire land in question. The defendant filed a counter claim and prayed for declaration of his title of one fourth of the land noticed above. The order of temporary injunction passed by the trial court was challenged by the defendant before the Revenue Appellate Authority. The Revenue Appellate Authority set aside the order of the trial court by observing that the defendants are in possession of the land in question. The plaintiff remained unsuccessful on further challenge before the Board of Revenue and this Court. The plaintiff sought amendment in the suit by filing an application under Order 6 Rule 17 C.P.C. claiming an alternative relief to the effect that due to the act of the defendant dated 26.12.93 and 28.12.93, if the court comes to the conclusion that the defendants are in possession of the land in question, then their possession is without permission of the plaintiff and is of as trespasser. Therefore, the defendants be ejected u/s 183 of the Act and they be further visited with 15 times penalty. The trial court dismissed the said amendment application filed by the plaintiff. On revision before the Board of Revenue, the Board of Revenue by order dated 5.6.2002 allowed the revision petition and set aside the order of the trial court dated 10.7.2002. The application filed by the plaintiff under Order 6 Rule 17 C.P.C. seeking amendment, was allowed. This order of the Board of Revenue was challenged by the defendant writ petitioner before this Court. After having considered the entire material, the learned Single-Judge declined to interfere with the order of the Board of Revenue and dismissed the writ petition.

5. It is contended by the learned counsel for the appellant defendant that the ambit and scope of the provisions of sections 183 and 188 of the Act are altogether different inasmuch as pleading of the plaintiff in the plaint and pleading sought to be added by way of amendment, are contradictory. In the original plaint, the petitioner sought the relief of perpetual injunction on the basis of title and possession whereas ultimately the defendants were found to be in possession of the land in question. It was further contended that amendment in the plaint is sought after about six years from filing of the original suit and, therefore, it was contended that the amendment sought in the plaint is prejudicial to the rights of the defendant.

6. Mr. J.R. Beniwal, learned counsel for the plaintiff respondent contended that the suit land has been purchased by the plaintiff by a registered sale deed and in the record of rights of the revenue authority, the land in question has been recorded and mutated in favour of the plaintiff right from the date of purchase till date. It was further contended that during the pendency of the suit for perpetual injunction if the defendant trespassed over the land in question or part thereof, then the possession of the defendant is that of a trespasser and the plaintiff is entitled to amend the suit and to incorporate the alternative relief of possession/ejectment of the trespasser. He further contended that even otherwise the trial court by exercising the powers u/s 209 of the Act can pass an order of ejectment of the defendant after framing necessary issues and grant any relief which the court is competent to grant and to which it may find the plaintiff entitled notwithstanding that such plea may not have been asked for in the plaint or application. He has relief on a judgment of the apex Court in *Bhura Mogiya and Ors. v. Satish Pagariya and Ors.* (1). In that case, the suit was filed for declaration that the plaintiff- respondents are the recorded tenants and for injunction and alternatively, for possession of the land, i'f the plaintiffs were not found in possession. The Hon''ble Supreme Court held that it is true that Section 209 provides that in any suit on the application of the plaintiff the court after framing necessary issues may grant any relief which the court may deem fit and find the plaintiffs are entitled. In that case the issue before the Revenue Court was about the title of the parties. In the plaint, the plaintiffs have sought relief for ejectment of the defendants from the land in case they are not found in possession. The Board of Revenue found that the plaintiffs are entitled to be recorded as sah-khatedars. The plea of the plaintiffs being in possession having not been found correct the Court has invoked its jurisdiction u/s 209 of the Act and on these premises, the contentions raised by the appellant therein were rejected and appeal was dismissed.

7. It is settled legal proposition that amendment in the pleadings may generally be allowed in case the amendment sought is necessary for the purpose of determining the real question in controversy between the parties. However, it should not cause injustice or prejudice to the other side.

8. In *Jayanti Roy v. Dass Estate Pvt. Ltd.*, (2), the Supreme Court observed as

under :-

"It is settled that amendments to pleadings which are moved at the proper stage and not unduly delayed should not normally be refused. In the application raising dispute on payment of rent under Sections 17(2), and (2-A) of the Act the appellant has right from the beginning denied relationship of landlord and tenant between the parties. An amendment was moved stating that on discovery of additional evidence and material. Alamohan Dass was merely a "permissive occupier" in respect of one of the dugs. The appellant also sought leave to explain the nature of her possession and occupation. There does not appear any material inconsistency between the original averments in the application and those proposed by amendment."

9. The Supreme Court in *G. Nagamma and Ors. v. Siromanamma and Anr.* (3), has held that in an application under Order 6 Rule 17 C.P.C., even an alternative relief can be sought. However, it should not change the cause of action or materially affect the relief claimed earlier.

10. In *Om Prakash Gupta v. Ranbir B. Goyal*, (4), the apex Court observed that amendment should not disturb the relevant rights of the parties those existed on the date of institution of a suit, but subsequent events may be permitted to be taken on record in exceptional circumstances if necessary to decide the controversy in issue. The Court held as under :-

"Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so far the purpose of determining real question in controversy between the parties."

11. The apex Court in *Muni Lal v. Oriental Fire & General Insurance Co. Ltd.* (5), held that the relief of amendment should be granted to render substantial justice without causing injustice to the other party or violating fair-play and the Court should be entitled to grant proper relief even at the stage of appellate forum."

12. Similarly, in *Ganesh Trading Co. v. Maoji Ram* (6), the Supreme Court observed that where amendment is found to be necessary for prompting the ends of justice and not for defeating it, the application for amendment should be allowed.

13. In *B.K. Narayana Pillai v. Parameswaran Pillai and Anr.* (7), the Supreme Court held as under :-

"The purpose and object of Order 6 Rule 17 C.P.C. is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncaled-for multiplicity of litigation."

14. In *Om Prakash Gupta*'s case (supra), the Supreme Court observed as under:-

"The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied; (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

15. In view of the above judicial pronouncements, the legal proposition can be summarised that amendment of pleading is permissible at any stage and there is no bar amending the pleadings seeking an alternative relief and for the same, as it is seeking to lay down factual foundation. The amendment sought should neither take away the right accrued in favour of a party nor it should change the cause of action. Delay in moving the court seeking amendment is not fatal unless other side establishes that its cause gets prejudiced.

16. Having considered the matter in depth and detail and keeping in view the settled proposition of law as explained above, we are of the view that in the instant case, there does not appear any material inconsistency between the original pleadings in the suit and the pleading sought to be incorporated in suit by way of amendment under Order 6 Rule 17 C.P.C. The prayer for alternative relief sought to be made in the suit cannot be said to displace the case of defendant or to cause any prejudice to him and more particularly when the trial court can grant the relief which the court is competent to grant and to which it must find the plaintiff entitled notwithstanding that such relief may not have been asked for in the plaint or application by invoking powers u/s 209 of the Act, then under the circumstances allowing the amendment would not prejudice the case of the defendant. In this view of the matter, no interference is called for

with the order of the learned Single Judge.

17. Consequently, these appeals fail and are dismissed. However, there shall be no order as to costs.