

(2009) 07 CHH CK 0001

In the Chhattisgarh High Court

Case No : Writ Petition (227) No's. 3713 and 3715 of 2008

Manohar Singh Rathore and Others

APPELLANT

Vs

Vyom Sheet Grih Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Order 6 Rule 17
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A
Constitution of India, 1950 — Article 227

Citation : (2009) 3 CGLJ 200

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Advocate : Prafull Bharat and Santosh Bharat, for the Appellant; Vishnu Kosta and Sangeeta Mishra, Panel Lawyer for State, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—Since both the petitions i.e. W.P.(227) Nos. 3713/08 and 3715/08 involve common question of law, arising out of the same order, therefore both petitions are being disposed of by this common order.

2. The instant petition is directed against the order dated 05.04.2008 (Annexure P/8), passed by the First Additional District Judge, Jagdalpur (CG), in civil suit No. 6A/08, whereby and whereunder, the application filed by the Plaintiff (Respondent herein), under Order 6 Rule 17 of CPC for amendment in the plaint was allowed.

3. The brief facts of the case are that, the Respondent filed a suit for declaration of title, permanent injunction and damages against the Petitioners before the Civil Judge, Class II, Jagdalpur, on the ground that the parties have entered into an agreement on 21.07.2003 to sale the suit property situated at village Kangoli, bearing Khasra No. 121/39 area 0.50 acre. It is submitted that the Respondent has paid the total sale consideration of Rs. 62,500/- and also the possession of suit land was handed over to mem. The Petitioner has not complied the terms

and conditions of agreement to sale, and therefore, the Respondent has filed a civil suit before the Civil Judge, Class II, Jagdalpur, seeking declaration of title and permanent injunction and damages.

4. On 28.06.06, the Respondent moved an application for amendment in the plaint. The Petitioner filed its reply on 21.07.2006 (Annexure P/3), opposing the proposed amendment. The Civil Judge, Class II, Jagdalpur, vide order dated 03.08.2006 (Annexure P/4), relying upon the submission of Defendant No. 1, which was based upon the judgment of Pandit Rudranath Mishir and Others Vs. Pandit Sheo Shankar Missir and Others, dismissed the application for amendment and the plaint was returned for presentation to the proper Court.

5. Thereafter, the Respondent filed the plaint which was returned by the Civil Judge, Class II, before the Additional District Judge, Jagdalpur. The Respondent also moved an application for amendment under Order 6 Rule 17 of CPC before the Additional District Judge, Jagdalpur, seeking same amendment, to convert the suit into one for Specific Performance of Contract. Notice was issued by the Court to the Petitioner. The Petitioner filed the reply of amendment application. The Additional District Judge, Jagdalpur, after hearing both the parties, allowed the amendment application vide its order dated 05.04.2008 (Annexure P/8). Hence this petition.

6. Shri Bharat, learned Counsel appearing for the Petitioners submits that after rejection of the application by Civil Judge, no appeal or review was preferred by the Respondent before the Civil Judge, and therefore, the order passed by the Civil Judge, rejecting the application for amendment filed by the Petitioner attained finality and same cannot be preferred again before the Additional District Judge. He further submits that the amendment which changes the nature of suit, cannot be allowed. In view of proviso to order 6 Rule 17 the Court's jurisdiction to allow such application is taken away after commencement of trial unless the Court comes to the conclusion that despite of due diligence the party could not have raised the matter before the commencement of trial, and as in this matter the said amendment was proposed after the commencement of trial before the Civil Judge without showing such cause, and therefore, the amendment ought to have disallowed by the Additional District Judge. He further submits that the trial commences when the issues were framed and the matter was posted for evidence, and the amendment was barred by limitation also.

7. Shri Bharat relied upon the judgments passed in the matters of K. Raheja Constructions Ltd. Vs. Alliance Ministries and others, , M/s Bharat Cooking Coal v. Rajkishore Singh AIR 2000 S.C. 3577 and Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai (deceased) Thr. LRs., .

8. Per contra, Shri Kosta supported the order passed by the Additional District Judge, and submits that the trial Court has not committed any illegality or irregularity by allowing the amendment application. The order is well reasoned order. In support of his contention, Shri Kosta relied upon the judgments passed

in the matters of Pandit Rudranath Mishir and Others Vs. Pandit Sheo Shankar Missir and Others, , Krishna Kumar Khandelwal Vs. Mangal Prasad and Another, , Ragu Thilak D. John Vs. S. Rayappan and Others, Pankaja and Anr. v. Yellappa (D) by LRs. and Ors. AIR 2004 SCW 4522, Rajkumar v. Dipender Kaur Sethi AIR 2005 S.C. 1592 , South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Others, and Mariambai v. State of M.P. 1998(2) MP W.N 89.

9. I have heard learned Counsel appearing for the parties, perused the pleadings and records. In this petition, the following questions arise for decision making:

i. Whether the effect of amendment would entail in ouster of the jurisdiction of the Court, which it originally had, the proper course would be to allow the amendment and then return the amended plaint for presentation before the proper Court, or whether to return the plaint alongwith amendment application before the proper Court and thereafter the proper Court would decide the amendment in accordance with law.

ii. What is the effect of return of plaint in terms of Order 7 Rule 10 and 10A of Code of Civil Procedure.

10. The Patna High Court in matter of Pandit Rudra Nath Mishir (Supra) while dealing with Order 7 Rule 10 and Order 6 Rule 17 of CPC observed in para 4 as under:

4....The granting of an amendment postulates an authority of the Court to entertain the suit. But where there is inherent lack of jurisdiction in the Court to entertain the suit itself, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction. In such a case the Court would be exercising its jurisdiction which is not vested in it and, therefore, passing of any order would amount to usurping a jurisdiction not vested in it. In such a case the Court is bound to return the plaint to be represented to the proper Court in which the suit ought to have been instituted. After the plaint is returned for presentation to the proper Court, the Plaintiff can amend the plaint and represent it to the same Court. The question of abandoning a part of the claim in a case where the valuation of the suit is beyond the pecuniary jurisdiction of a Court, however, stands on a different footing. In such a case no amendment of the plaint is necessary inasmuch as it is always open to the Plaintiff at any stage of the suit to abandon any part of its claim so as to bring it within the pecuniary jurisdiction of the Court.

11. This judgment was cited by the Petitioner herein before the Civil Judge, and based on this, the plaint has been returned by the Civil Judge for presentation to proper Court after rejecting the amendment application holding that the Civil Judge has no jurisdiction to allow that amendment. As per Single Bench of Patna High Court in the said judgment after the plaint is returned for presentation to the proper Court, the Plaintiff can amend the plaint and can file the same to the Court.

12. The Nagpur High Court in case of Lalji Ranchhoddas v. Narottam Ranchhoddas AIR 1953 Nag 273, had ruled as under:

When the Court is faced with the question of allowing an amendment which taken together with the original claim exceeds its pecuniary jurisdiction, it should return the plaint together with the application for amendment for the consideration of the Court having jurisdiction to consider the original claim and the claim sought by the amendment not taken separately but together.

13. On the contrary, a Division Bench of MP High Court in the matter of Krishna Kumar Khandelwal (Supra), after discussing the various judgments overruling its judgment which were earlier reported in 1967 MPLJ (SN) 78, 1976 MPLJ (SN) 5 and 1984 MPLJ (SN) 1, held that the correct position of law is that the effect of amendment which would entail in ouster of the jurisdiction of the Court, which it originally had, the proper course would be to allow the amendment and then return the amended plaint for presentation before the proper Court. Similar views have been expressed in cases reported in AIR 1971 Bom. 383, AIR 1959 Raj 146, AIR 1980 NOC 1 (Madras) and Patel Construction and Co. and Another Vs. Shah Raichand Amulakh and Another, .

14. The controversy can be looked from another angle, namely, while deciding own jurisdiction each Court has the authority to deal with jurisdictional fact. Valuation of suit though sought to be brought in by way of amendment is basically an issue relating to fact. When the question of returning of the plaint arises there is a presumption that the Court would allow the amendment. It may refuse the prayer. To conceive the idea that it must return the plaint along with amendment would tantamount to denuding the Court to exercise his jurisdiction to determine his own jurisdiction.

15. In view of the above, I am in respectful agreement with the views expressed by Division Bench of MP High Court in the matter of Krishna Kumar Khandelwal (Supra), and I hold that the Court while dealing with the amendment application, which if allowed would entail in ouster of the jurisdiction of the Court, which it originally had, the proper course would be to allow the amendment and then return the amended plaint for presentation before the proper Court.

16. The second question arises for determination is what is the effect of return of plaint in terms of Order 7 Rule 10 and 10A of Code of Civil Procedure. The Order 7 Rule 10 and 10A of CPC reads as under:

Return of plaint.-(1) [Subject to the provisions of Rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) Procedure on returning plaint.-On returning a plaint the Judge shall endorse

thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

10-A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.-(1) Where, in any suit, after the Defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the Plaintiff.

(2) Where an intimation is given to the Plaintiff under Sub-rule (1), the Plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the Defendant.

(3) Where an application is made by the Plaintiff under Sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the Plaintiff and to the Defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under Sub-rule (3),-

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the Defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the Defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the Plaintiff under Sub-rule (2) is allowed by the Court, the Plaintiff shall not be entitled to appeal against the order returning the plaint.

17. A bare perusal of provision would reveal that the suit which is instituted on the representation of the plaint in the competent Court after its return by the Court which lacked the jurisdiction is a freshly instituted suit within the meaning of the provisions of the CPC and shall be governed by the provision of Order 7, Rule 10 and 10A. Such a suit will be tried de novo in accordance with the provisions of the Code. Any proceedings taken up and orders made in the suit during its pendency before the Court which lacked necessary jurisdiction come to an end as soon as the order for the return of the plaint is made by the said Court.

18. The Supreme Court in case of Hanamanthappa and another Vs. Chandrashekharappa and others, observed that the object of Order VII, Rule 10A is that the Plaintiff, on return of the plaint, can either challenge in an appellate forum or represent to the Court having territorial jurisdiction to entertain the suit. In substances, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee.

19. In view of the above, it is clear that when the suit has been filed in the competent Court of jurisdiction after return of plaint with amendment application or even by filing the amended plaint, then it would be a fresh suit.

20. The Civil Judge, placing reliance upon the case law cited by the Petitioner, held that it had no jurisdiction to allow the amendment and returned the plaint. The Respondent filed the returned plaint alongwith amendment application before the Court of competent jurisdiction which is in fact a fresh suit and it cannot be said that the amendment has been proposed after commencement of trial.

21. In view of the facts circumstances of the case, I also do not find any substance in the submission of Shri Bharat that as the amendment application has already been rejected by the trial Court and therefore, it attained finality and amendment application cannot be filed again because the application was dismissed by the Civil Judge by holding that it had no jurisdiction to allow the amendment and returned the plaint, and secondly as held hereinabove before the Court of competent jurisdiction, infact the same is a fresh suit.

22. It is well settled principle of law that this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, should refrain itself from interfering with the order passed by the Court below, except in such cases where perversity, illegality, irregularity or jurisdictional error is writ large on the face of the record, which is not in the present case.

23. Therefore, in the facts and circumstances of the case, the Petitioners utterly failed to demonstrate the illegality or irregularity committed by the trial Court so as to invoke the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

24. For the reasons mentioned hereinabove, the petitions stand dismissed. No order asto costs.