

(2018) 12 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition (Art. 227) No. 47 of 2018

Manoj Kumar Khandelwal, S/o Late Madholal Khandelwal APPELLANT
Vs

Dwarika Prasad Sharma, S/o Late Badri Prasad Sharma and RESPONDENT
Ors

Date of Decision : 04-12-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 6 Rule 17

Citation : (2018) 12 CHH CK 0017

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Hari Agrawal, Madhulika Jha, Adhiraj Surana

Final Decision : Allowed

Judgement

1. The petitioner herein is defendant No.6 before the trial Court. Respondent No.1 herein, who is the plaintiff before the trial Court, filed a civil suit claiming that he be granted vacant possession of the suit property from defendant No.7 - Shri Vardhman Jain Sansthan, Durg and also prayed for declaration that defendant Nos.1 to 6 have no right, title and interest over the suit property and the gift deed dated 27-10-2005 executed by defendant No.6 - the petitioner herein, is void and invalid and pursuant to the said gift deed, defendant No.7 has no right, title and interest over the suit property.

2. During the pendency of suit, on 11-5-2006, the plaintiff / respondent No.1 filed an application under Order 6 Rule 17 of the CPC seeking to insert averments in paras 13 & 18 of the plaint that defendants No.1 to 6 have fraudulently got mutated the suit property in their name on the basis of registered sale deed dated 5-7-2001 and this fact came to the knowledge of the plaintiff only on 22-12-2005 from the reply filed by defendant No.6 before the Revenue Court to the objection filed by the plaintiff. The plaintiff also prayed for addition in the relief clause that it be declared that the sale deed dated 5-7-2001 executed by defendants No.1 to 5 in favour of defendant No.6 has been executed fraudulently

and without consideration and therefore the same be declared null and void and possession of the suit property be returned and thus, the suit is within limitation from the date of knowledge which was opposed by the present petitioner / defendant No.6 taking permissible plea including the plea of limitation that the said plea is barred by limitation.

3. The trial Court by its order dated 4-11-2006 rejected the said application holding that the plaintiff was one of the sellers/executants in the sale deed dated 5-7-2001 and he was aware of the sale deed since 5-7-2001 and therefore the proposed amendment is beyond the period of limitation. The second application filed praying for similar amendment second time was came to be rejected on 15-3-2010, but the third application seeking amendment dated 8-11-2017 was filed stating that the sale deed dated 5-7-2001 is forged and fabricated and not binding on the plaintiff. This time, the trial Court was impressed with the said application for amendment and granted the same overruling the objections raised by defendant No.6 and questioning that order, this writ petition has been preferred.

4. Mr. Hari Agrawal, learned counsel appearing for the petitioner/ defendant No.6, would submit that rejection of earlier applications for amendment praying for setting aside / declaring the sale deed dated 5-7-2001 null and void at the earlier stage would come in the way of the plaintiff in maintaining the third application which has been granted by the trial Court on 7-12-2017 and the same is hit by the provisions of res judicata as such, the third application was not maintainable and therefore the trial Court is absolutely unjustified in granting that application.

5. Mrs. Madhulika Jha, learned counsel for the plaintiff / respondent No.1 herein, would support the impugned order and would submit that in interlocutory stage, the principle of res judicata would not be applicable. She would rely upon the decision of the Supreme Court in the matter of Surjit Singh and others v. Gurwant Kaur and others (2015) 1 SCC 665 and also upon the decision of this Court in the matter of Subhash Chandra Jain v. Smt. Sunita Bajaj and another 2016(1) C.G.L.J. 325.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the documents appended with the writ petition.

7. It is not in dispute that the earlier applications filed under Order 6 Rule 17 of the CPC by the plaintiff / respondent No.1 claiming amendment that sale deed dated 5-7-2001 is null and void, were rejected by the trial Court firstly on 4-11-2006 and secondly on 15-3-2010 and those orders have attained finality which have not been shown to be assailed successfully before the higher forum.

8. The question for consideration would be whether the principle of res judicata would apply in the subsequent stage of suit?

9. The "principle of res judicata" has been very lucidly explained by R.F. Nariman, J, recently speaking for the Supreme Court in the matter of Canara Bank v. N.G. Subbaraya Setty and another AIR 2018 SC 3395 as under: -

"5. Res judicata is, thus, a doctrine of fundamental importance in our legal system, though it is stated to belong to the realm of procedural law, being statutorily embodied in Section 11 of the Code of Civil Procedure, 1908. However, it is not a mere technical doctrine, but it is fundamental in our legal system that there be an end to all litigation, this being the public policy of India law. The obverse side of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the Court takes place. ..."

10. The Supreme Court in the matter of Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another AIR 1960 SC 941 has held that the principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. It was observed as under:-

"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or on a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again ?"

11. In the matter of Y.B. Patil and others v. Y.L. Patil AIR 1977 SC 392, Their Lordships of the Supreme Court have observed as under:-

"4.....It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage

of the same proceedings. Once an order made in the course of a proceedings becomes final, it would be binding at the subsequent stage of that proceeding....."

12. Further, Their Lordships of the Supreme Court in the matter of Barkat Ali & Anr. v. Badri Narain (D) by LRs. JT 2008(2) SC 201 have considered the similar proposition of following judgment which is held as under:-

"9. In Arjun Singh v. Mohindra Kumar and others AIR 1964 SC 993 it was observed as follows:

"Scope of principle of res judicata is not confined to what is contained in Section 11 but is of more general application. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. ... Where the principles of res judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law provides, the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and the relevant factors to be considered before the principle is held applicable."

13. Reverting to the facts of the present case in light of the principles of law laid down by the Supreme Court in which the principle of res judicata has been held to be applicable and invoked not only in separate subsequent proceedings, but also get attracted in subsequent stage of the same proceedings, it would be quite apparent that in the instant case, the proposed amendment seeking insertion of challenge to the sale deed dated 5-7-2001 was rejected firstly on 4-11-2006 and secondly on 15-3-2010 which has attained finality as the same has not been shown to have been assailed successfully before the higher forum and the third application repeating the same prayer made on 8-11-2017 has been allowed by the trial Court holding that under Section 151 of the CPC, such an application can be granted.

14. As noticed herein-above, the principle of res judicata enumerated in Satyadhan Ghoshal (supra) applies also as between two stages in the same litigation and reiterated in Arjun Singh v. Mohindra Kumar and others AIR 1964 SC 993, the plaintiff was not entitled to maintain the third application for amendment on the same facts and grounds which have earlier been rejected by the trial Court firstly on 4-11-2006 and secondly on 15-3-2010 and which has attained finality between the parties.

15. It is also equally well settled law that when there is specific provision for grant of amendment and that power of amendment has been exercised by the trial Court either way, in order to circumvent the specific provision, power under Section 151 of the CPC cannot be exercised. As such, the trial Court is absolutely unjustified in holding that power under Section 151 of CPC can be exercised to grant the amendment when specific power is conferred under Order 6 Rule 17 of the CPC and that has been exercised by his predecessor-in-office and that has

been rejected and attained finality.

16. Relying upon the decision of the Supreme Court in *Surjit Singh (supra)*, an argument was raised that rejection of application to take additional documents during trial and formation of opinion would operate as *res judicata*, but the Supreme Court reserved that question to be answered in appropriate case and did not express any opinion about the applicability of the said doctrine as such, this decision is clearly distinguishable on facts to the present case.

17. Likewise, in *Subhash Chandra Jain (supra)*, the applicability of *res judicata* in interlocutory applications has not been considered. This case is not applicable to the facts of the present case.

18. As a fallout and consequence of the aforesaid discussion, the order impugned dated 7-12-2017 is set aside and the application for amendment granted by the trial Court would stand rejected. The trial Court is directed to proceed further with the suit and conclude the same within three months from the date of receipt of a copy of this order, as the suit is pending consideration with effect from 3-4-2006.

19. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

20. A copy of this order be sent to the trial Court by E-mail/fax for compliance of this order.