
(2001) 07 AHC CK 0008
In the Allahabad High Court
Case No : Civil Revision No. 404 of 2001

M/s Lachman Das Hans Kumar and Another	APPELLANT
Vs	
Punjab National Bank and Others	RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Limitation Act, 1908 — Article 19, 21
Specific Relief Act, 1963 — Section 16C

Citation : (2001) 07 AHC CK 0008

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—This is a revision against the order of the 1st Additional Civil Judge (Senior Division), Saharanpur allowing amendment in the plaint. The plaintiff sought a decree for sale of the mortgaged property. By amendment, the plaintiff sought to add the relief for a simple money decree. Objections were filed, by the defendants-applicants that the plea was barred by limitation. The amendment was allowed by the Trial Court vide impugned order dated 27.4.2001.

2. I have heard Shri Rajesh Tandon, learned Senior Counsel for the revisionists-applicants. His contention is that the relief for a simple money decree is barred by time in view of Articles 19 and 21 of the Limitation Act, which provide for a three-year limitation for filing the suit. Reliance is placed by Shri Tandon upon following three decisions of the Apex Court.

(i) Vijendra Kumar Goel v. Kusum Bhuwania, (1997) 11 SCC 457 .

(ii) Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, .

(iii) K. Raheja Constructions Ltd. Vs. Alliance Ministries and others, .

3. In *Virendra Kumar Goel (supra)* amendment of the plaint in a suit for declaration and injunction to seek the relief for specific performance was refused on the ground that the suit for specific performance had already become barred by limitation. The Apex Court observed that although the plaintiff had made reference to the agreement and requested for execution of the sale deed but there was nothing in the plaint to show that the respondent was seeking specific performance of contract. It is to be noted that the Apex Court did not agree with the view of the High Court that the plaintiff-respondent had made out a case for specific performance and nothing new had been sought for by way of amendment.

4. In *Munni Lal (supra)* the suit was for mere declaration that plaintiff was entitled to the total loss of the truck from the Insurance Company. An application under Order VI, Rule-17 was filed in the Appellate Court seeking consequential reliefs for payment of compensation for the loss of truck. The amendment was refused on the ground that it was, barred by limitation. The decree was affirmed by the High-Court. The Apex Court too refused addition of the alternative relief for payment of money. However, the Apex Court held that with a view to mould the relief a new fact can always be taken to render substantial justice without causing injustice to the other party or violating fair play. In paragraph 5 of its judgment, the Apex Court held :

The question, therefore, is whether the Court would be justified in granting amendment of the pleadings in such manner so as to defeat valuable right of defence of bar of limitation given to the defendant. It is true this Court in the case of *Vineet Kumar Vs. Mangal Sain Wadhera*, (at SCC Page 360 in para 16) held that normally, amendment is not allowed, if it changes the cause of action. But it is well recognised that where the amendment does not constitute the addition of new cause of action, or raise a new case, but amounts to not more than adding to the facts already on record, the amendment would be allowed even after the statutory period of limitation.

5. In *K. Raheja Constructions Ltd. and another (supra)* amendment of the plaint was sought for grant of relief of specific performance of contract in a suit for permanent injunction restraining the defendants from selling the property. In this case, the Apex Court refused the amendment after turning down the contention of the petitioners that the relief was really founded upon the facts set out in the plaint and it is the Subsequent knowledge of facts about permission granted by the Charity Commissioner for alienation, which required the amendment.

6. The question, therefore, is what is the test to be applied for determining when a time barred amendment in the relief clause is to be refused and when allowed. The ratio of the decision of the Supreme Court and Privy Council is that where the amendment does not constitute the addition of new cause of action or raise a different case, but amounts to not more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation. If from the objective analysis of facts constituting

the cause of action, it can be inferred that a genuine mistake could occur in framing the relief it is open to correction. This would often be the case if the relief claimed belongs to a different species of the same family. Thus a suit for damages of one kind can be converted into a suit for damages of another kind if the cause of action is not changed. Where damages for conversion were claimed amendment was allowed by the Apex Court to incorporate relief on damages for breach of contract for non-delivery of goods vide *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, in AIR 1921 50 (Privy Council), a suit for damages was allowed to be converted into suit for damages for breach of contract after the claim became barred by time as the necessary facts were already in the plaint. In such a case the Court would be only moulding the relief.

7. In *Pirgonda Hongonda Patil v. Kalgodna Shidgodna*, AIR 1937 SC 363; a suit for declaration of title was allowed to be amended setting out the detailed facts on which the title was claimed after the suit had become time barred. Similar view has been taken in *A.K. Gupta and Sons Vs. Damodar Valley Corporation*. The power of the Court to do justice is unfettered. In *Leach & Co. (supra)*, the Supreme Court in para 16 held:

16. It is not doubt true that Courts would, as a rule, decline to allow amendments if a fresh suit on the amendment claim would be barred by limitation on the date of the application But that is a factor to be taken into account in exercise of the discretion as : to whether amendment should be ordered, and does not affect the power of the" Court to order it, if that is required in the interests of justice. In *Charan Das v. Aamir Khan*, 47 IInd App 255: AIR 1921 PC 5 (A) the Privy Council observed: -

That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such consideration are out-weighed by the special circumstances of the case.

8. *Shri Tandon*, contended that the decision in the case of *A.K.Gupta and, Sons (supra)* was distinguished in *K.Raheja Constructions Ltd. and another (supra)* relied upon by him. No doubt, the decision in the case of *A. K.Gupta* was distinguished by the Supreme Court but that was in relation to the case wherein in a suit for permanent injunction restraining sale, relief for specific performance was sought to be added. The nature of a suit for specific performance is quite different from that of a suit for injunction. A right for specific performance of contract must necessarily arise out of failure on part of other party to fulfill his obligation under the contract, not necessarily so in an injunction suit. In a suit for specific performance the requirements of Section 16 C of the Specific Relief Act are part of the cause of action not so in a suit for injunction. The nature of the relief is also different.

9. A suit for sale of mortgaged property is really a suit for recovery of money.

But the recovery can be made only against specified mortgaged property. Even in a suit for sale of the mortgaged property a preliminary decree is passed in which after settling the accounts, the defendant is given opportunity to pay the decretal amount to the plaintiff. It is true that the preliminary decree cannot be executed and in case the defendant does not make payment, the Court will pass a final decree for sale of the property and out of the sale proceeds, the plaintiff's dues are to be cleared cut and the balance if any to be paid to the defendant. In a suit for a simple money decree, the claim is not with reference to any specific property. It is a decree for payment of money against the defendant. The nature of both the suits however is the same. They are both suits for recovery of money and belong to the same-family. In ILR 24 All 456, Sukhdeo Prasad v. Lachman Singh and others, the Court allowed the plaintiff in a suit for sale of mortgaged property to relinquish the security and claim a simple money decree. It has held that there would be no inconsistency in such a course of action.

10. Amendment seeking addition of the relief of a simple money decree in a suit for sale of mortgaged property can be allowed for another reason. In case the sale proceeds are not sufficient to cover up the dues of the plaintiff, he can proceed on the basis of simple money decree to realise the dues from other property., If the relief for a simple money decree is not claimed in a suit for sale of mortgaged property in respect of the same debt, and the sale proceeds of the mortgaged property are not sufficient to clear off the plaintiffs dues in respect of that debt, a subsequent suit for money would be barred by Order II, Rule 2(3) CPC. If on this analysis a suit for a simple money decree would be barred, it is implicit that both reliefs can co-exist in the same suit.

11. Assuming that on the date of amendment application in the present case the relief for a simple money-decree was barred by time the addition of that relief in a suit of mortgaged property would neither change the cause of action nor the nature of the suit. It would be an additional approach to the same facts. In the circumstances, the Court below committed to error in allowing the amendment. The revision fails and is-dismissed.