
(2001) 10 RAJ CK 0088
In the Rajasthan High Court
Case No : Civil First Appeal No. 229 of 1996

Ms Rebeca D. Lal

APPELLANT

Vs

Ms Onila I. Charna and Another

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 6 Rule 17

Citation : (2003) 1 RCR(Civil) 596 : (2002) 4 RLW 2341

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : P.S. Sirohi, for the Appellant; O.P. Garg, for the Respondent

Final Decision : Allowed

Judgement

Madan, J.—This appeal having been filed against the judgment of the learned Addl. Distt. Judge No. 5, Jaipur City, Jaipur dt. 9.7.96 dismissing the plaintiff's suit for ejectment and for mesne profits, has come up before this Court on an application filed by the plaintiff appellant under order 6 Rule 17 CPC seeking amendment in the plaint itself. Reply to the amendment application was also filed by the defendant respondent (Onila E. Charan).

2. The facts, shorn in details, but relevant are that plaintiff appellant instituted a suit for ejectment and mesne profits against the defendants in respect of suit property consisting of two rooms, one kitchen, store and toilet constructed on suit land, on the assertions that when the survey was conducted by the then Urban Improvement Trust, Jaipur in respect of the land being occupied by the persons on the mission compound situated at Ajmer Road name of the plaintiff was entered in survey record of 1981 as having been occupied by her on the suit land, thereafter United Church of North India had allegedly lodged a complaint for the trespass over the mission compound land. Ultimately, compromise was arrived at on 30.9.86 and the occupiers of the mission compound land including the plaintiff were asked to deposit Nazrana of Rs. 5000/-which was deposited by her and thereby she continued in possession over the suit kind. It has also been

contended that after the death of her brother (S.D.Lal), his wife (Smt. Florense) used to remain sick, so to look after her brother's wife, the defendants used to come at the place of the plaintiff since 1989 and after the death of her brother's wife (Smt. Florense), in July 1989 the defendants forcibly took the possession of the portion of suit land where her brother (S.D.Lal) and his wife (Smt. Florense) had been allowed to reside. Hence, the ejectment of the plaintiff from the portion of suit land described in para 1 of the plaint was sought with a mesne profits @ Rs. 1000/- per month.

3. In reply to the plaint defendant No. 1 claimed herself to reside as daughter with S.D. Lal (brother of plaintiff) and continued during life time of S.D.Lal and after his death, with his wife (Smt. Florense) who is stated to have executed a will on 29.5.1989 in her favour and by virtue of it she claimed herself as an owner of the suit premises wherein she has been residing alongwith her husband defendant No. 2. On the basis of the pleadings of the parties, 7 issues were framed. After recording the evidence and hearing the parties the learned trial Court on the basis of the findings arrived at under Issues No. 1 to 3 & 6 dismissed the plaintiff's suit under the impugned judgment. Hence, this appeal.

4. Amendment in the plaint is sought asserting that the suit land initially was owned by the United Church of North India Trust (for short "the Trust") from whom the appellant had purchased a plot under an agreement dt. 2.5.1989 but since the Trust did not execute the deed in favour of the appellant, so a suit was ultimately filed for specific performance on 1.12.1990 which stood decreed in her favour on 1.12.1991.

5. It has further been asserted that in respect of the suit land another suit was also instituted and pending before Additional Civil Judge (Sr. Div.) No. 5, Jaipur City, Jaipur which was decreed vide judgment dt. 25.4.97 in favour of the present plaintiff and pursuant thereto a lease deed was got registered in favour of the plaintiff by the Sub Registrar Jaipur on 6.11.1997, having arisen the cause to amend the plaint in a suit for possession and mesne profits which was decided on 9.7.1996 much earlier to the subsequent decree passed on 25.4.97 granting relief to get the lease registered in favour of the present plaintiff.

6. By way of amendment the plaintiff wants to add the averments as para 1A to the plaint incorporating the averment for claiming and establishing her ownership on the basis of aforesaid subsequent decree passed in her favour and the registered lease deed dt. 6.11.1997 which are asserted to be essential facts having arisen after the impugned decree under appeal.

7. In reply to the aforesaid amendment application serious objections have been raised inter-alia that the lease deed and the decree in suit No. 90/90 in fact was obtained by way of compromise in collusion with and by playing fraud and in that suit the present defendant had also filed an application to implead her as a party but the trial Court in Suit No. 90/90 vide its order dt. 26.11.1996 declined thereto against which Revision Petition No. 506/97 (defect) was filed before this

Court inasmuchas, after the aforesaid decree in suit No. 90/90 suit No. 525/97 was also filed by the defendants against the present plaintiff, which has been pending alongwith Misc. Application No. 204/97, wherein, status-quo has been ordered to be maintained, while decree was sought to be declared ineffective and void as against the rights of the present defendants.

8. By another application under Order 13 Rule 2 CPC for taking on record registered lease deed was also filed which was also contested by filing a detailed reply.

9. I have heard learned counsel for the parties and perused the impugned judgment & decree so also the additional documents sought to be taken on record and filed alongwith application seeking amendment in the plaint.

10. From the pleadings and material on record it stands crystal clear that the parties to the suit and this appeal have complicated the matter by way of filing claims and counter claims in their respective suits one after the other, it is an admitted fact that Civil Suit No. 90/90 was filed by the present appellant plaintiff though not making the present defendants as party to it but against which defendants' application was also dismissed by the trial Court under order dt. 26.11.1996 in plaintiff's another suit No. 90/90 and that order declining the present defendants as party was also challenged in Revision Petition No. 506/97 (defect) which too was dismissed under pre-emptory order dt. 3.7.1998 for non prosecution.

11. Let me here browse through the findings arrived at by the trial court under Issue No. 1 and 6. to prove Issue No. 1 burden of which was on plaintiff while that of Issue No. 6 was on defendant. On the basis of document Exh. 190 the trial Court found the ownership of land ax of the Trust and it further concluded that the Trust was the owner of the land and not be plaintiff or even not S.D.Lal. similarly, as per notice Exh. 4 issued to the plaintiff, the suit land was of the Trust inasmuch as, according to the trial Court merely because any amount was deposited it does not confer any right to the plaintiff for ownership of the suit land. That apart the trial Court also held that merely because water and electricity consumption bills are in the name of plaintiff does not prove the ownership over the suit land. In ultimate conclusion the trial court held the plaintiff as not owner of the suit land but held the suit land as the property of the trust and even it has specifically concluded the merely because permission was accorded to construct the house in favour of S.D.Lal it does not decide the factotum of ownership in favour of any party to the suit. Similarly, on the basis of conclusions drawn under Issue Nos. 1 & 6 against the plaintiff the trial Court decided Issue No. 2 for grant of mesne profits against the plaintiff. Under Issue No. 3 the trial Court held that the plaintiff failed to prove by leading any evidence to show that the defendants were evicting the plaintiff or causing any damage to the suit land. Hence, she was held disentitled to any injunction or to possession. However, under Issue No. 4 the suit was held to be within limitation and Issue No. 5 was decided against the defendants and thus, on the basis of conclusions

(supra) under Issue No. 1 to 3 and 6, the suit was dismissed.

12. Be that as it may, not the decks are clear and it stands concluded and established on record even as per the finding of the learned trial Court itself that the suit land undoubtedly was owned and it the ownership of the Trust as per the admissions wrong out of the pleadings and material available in evidence of both the parties on record in this suit. The documents sought to be taken on record on the applications at hand (registered lease deed & the decree passed, in favour of the present plaintiff) show the ownership of the suit land in favour of the Trust which has allegedly entered into compromise on some terms and conditions in a civil Suit No. 90/90 in respect of the suit land for lease comprising of a total area of 439.11 sq.yar. (52x76 feet). On the basis of these averments plaintiff seeks to amend the plaint because the factotum of lease deed having been registered under a decree has come in light as a subsequent event.

13. The question raised by the present defendants as to whether the compromise decree and the lease deed executed in pursuance thereof was a collusive one cannot be decided in these suit proceedings or this appeal arising out of suit for ejectment and mesne profits. Even during the course of arguments, it was not disputed at the bar that if the amendment is allowed, the matter has to be remanded back and in that view of the matter as I find from written arguments of the defendants respondents that there is no serious objection as to the remand because mere allowing the amendment or the documents to be taken on record does not confer any right to the plaintiff for any decree and it is obligatory on the part of the court to give opportunity to the party to rebut the pleadings and evidence and counter the claim of the claimant by way of amended written statement followed by adducing evidence in rebuttal to the amended pleadings. Similarly, as regards the impleadment of any party to the present suit proceedings or the consolidation of the suits the same cannot be decided in these suit proceedings.

14. In my considered opinion in the facts and circumstances of the case shown above it is necessary to take notice of subsequent events in order to shorten the litigation and to do so in order to complete the justice between the parties, I deem it appropriate to allow the application seeking amendment in the plaint after para 1 as para 1A and to take the documents on record filed alongwith application under Order 13 Rule 2 CPC. My view is fortified from the decision in Shikhar Chand Jain v. Digambar Jain (1).

15. Consequently, application presented on 10.7.1998 under Order 6 Rule 17 CPC and another one presented on 20.4.99 under Order 13 Rule 2 CPC both are allowed with no order as to costs and the trial Court is directed to allow the plaintiff to amend the plaint as requested by the plaintiff in her application dt. 20.7.98 only and also allow her to take the documents on record filed with application dt. 20.4.99. As soon as the amended plaint is filed, an opportunity be afforded to the defendants to refute the allegations made in the amended plaint by way of filling the amended written statement to the extent of only amended

plaint and both the parties be given opportunity to lead their evidence in support of the amended pleadings only and on the issues if framed qua amended pleadings.

16. As a legal corollary to the above, this appeal is allowed with no order as to costs and the matter is remanded back to the trial Court to proceed in the suit as indicated above in accordance with law without being influenced by any conclusions drawn under impugned judgment or observations made by this Court hereinabove as to the merits of the case and then decide the suit afresh expeditiously but not beyond six months from the receipt of the record, for which both the parties are directed to cooperate with the court. The Registry is directed to send back the record to the lower court alongwith this judgment's copy.