

(2001) 03 BOM CK 0113

In the Bombay High Court

Case No : Civil Revision Application No. 1081 of 1998

Mudra Salt and Chemical Industries

APPELLANT

Vs

The Collector, Dist. Thane and Others

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

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

Citation : (2001) 3 ALLMR 356 : (2001) 4 BOMLR 534 : (2001) 3 CivCC 321 :
(2001) 3 MhLj 151

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : Abhay S. Oka, for the Appellant; R.A. Thorat, for the Respondent

Final Decision : Allowed

Judgement

V. C. Daga, J.—This revision application is directed against the order dated 3.9.1998 passed by the Second Joint Civil Judge, S.D. Thane, below Ex. 49 in Special Civil Suit No. 936 of 1997, rejecting application seeking amendment to the plaint, holding that inconsistent pleas cannot be allowed to be brought on record by way of an amendment.

The facts giving rise to the present Revision Application may be noticed as under :

2. The plaintiff has filed a suit bearing Special Civil Suit No. 936 of 1997 pending on the file of the Civil Judge, S.D. Thane, seeking negative declaration that defendant Nos. 1 to 3 have no right, title and interest to allot, any part or portion of the suit land, situated at village Kopri, Taluka and District Thane, to any third party, with further declaration that the defendant Nos. 4 and 5 have no right, title, interest, of whatsoever nature in the said land, and that the alleged order of allotment passed by defendant No. 1 in favour of the defendant Nos. 4 and 5 are patently illegal and not binding on the plaintiffs. The plaintiffs have also prayed for an order of permanent Injunction restraining the defendants, their servants

and/or agents and/or any other person claiming under or through them from entering in the suit land and/or disturbing the possession of the plaintiff in any manner whatsoever.

3. On being noticed, the respondents-defendants appeared and filed their written statement and disputed, the assertions made by the plaintiffs. The defendants even went to the extent of denying the title of the plaintiffs to the said land. After going through the contents of the written statement filed by the defendants, the plaintiffs desired to amend their plaint. Accordingly, they moved an application for amendment of plaint Order VI Rule 17 of the CPC (C.P.C. for short). Accordingly, the Trial Court was requested to permit them to carry out amendment to para 14 of the plaint. The amendment was to the effect that the-suit plots were situated at the distance of more than 60 metres from City Survey" No .1963. This amendment was in reply to the stand taken by the defendants in their written statement, that the land of the plaintiff is not situated near the land of the original defendants bearing survey No. 1963 and that the same is situated far way from the plaintiffs land. The plaintiffs desired to contend that the land is situated on the western side of the building of Beam's Paradise School and that the plaintiffs are in uninterrupted possession of the said suit land as owners thereof. That Is how the plaintiffs claimed ownership on the disputed land by way of adverse possession. This right was sought to be pleaded, by way of amendment to .the plaint.

4. The defendant Nos. 1 to 3 strongly resisted the application of the plaintiffs and contended that the suit filed by the plaintiffs was based on title and that the plaintiff should not be allowed to take mutually inconsistent plea. Thus, according to the defendants amendment sought by the plaintiffs was totally Inconsistent and contradictory and was nothing but an afterthought as such amendment was opposed by them.

5. The above application seeking to amend plaint was rejected by the Trial Court vide its order dated 3rd September, 1998 holding that inconsistent pleas cannot be allowed. The said order is the subject matter of challenge in the present revision application.

6. The learned Counsel, appearing for the petitioners contends "that the entire order rejecting prayer for amendment of the plaint is absolutely perverse and the same suffers from material illegality and, consequently, the same is liable to be quashed and set aside. He further contends that while considering the amendment it is not open for the Trial Court to dwell upon merits of the amendment. The learned Counsel for the petitioner drew my attention to para 14 of the order, particularly to the observations dealing with merits of amendment. ,

7. In order to bolster up the submission he also drew my attention to some observations made by the Trial Court on merits of the amendment while rejecting the same. The text of the same is reproduced herein below:

"According to them, the plff. has no concern at all to Its City Survey No. 1963.

Now. It is already pointed out that the plaintiff is not filing the sanad to ascertain as to what are the boundaries of the land held by the plaintiff. The -plaintiff has also not filled on record map to ascertain the area of the possession of the plaintiff."

In the aforesaid backdrop, learned Counsel for the petitioner contended that the Trial Court has erroneously dealt with and considered the merits of the amendment, which was not open at this stage, as such he branded the impugned order as perverse. The learned Counsel appearing for the petitioners placed reliance on the judgments of the Apex Court in *Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary*, *G. Nagamma v. Stromanamma*, and *Akshaya Restaurant v. P. Anjanappa*, and judgment of this Court in case of *Quality P. Closure u. M. S. E. B. Satara*, in support of his contentions. Having heard the parties it would not be out of place to mention that the suit is at the preliminary stage and issues are yet to be framed. The amendment application was moved at the preliminary stage. Apart from this, the main relief claimed in the suit is of declaration based on title. The plaintiffs are seeking declaration based on title; whereas by virtue of the amendment, the plaintiff are trying to claim title, alternatively, based on adverse possession. In these circumstances the question Is whether the amendment should be allowed or not.

8. The learned Counsel appearing for the respondents tried to support the impugned order and contended that the petitioner-plaintiff could not be permitted to amend the plaint in view of the fact that the plaintiffs in the original suit have claimed negative declaration; whereas by virtue of impugned amendment they are trying to claim a positive declaration, that they have become owners by adverse possession. Submission is that the plaintiffs cannot be allowed to claim two inconsistent declarations i.e. positive declaration as well as negative declaration in one and the same suit. It was further submitted that the impugned amendment, if allowed would give rise to the Inconsistent causes of action and, therefore, the impugned order rejecting an application for amendment should not be disturbed, especially, in exercise of revisional jurisdiction of this Court. The learned Counsel appearing for respondent No. 4 sought to place reliance on the Judgments of the Apex Court in *Arundhati Mishra v. Sri Ram Charitra Pandey*, and *Heeralal v. Kanyanmal* so as to contend that mutually inconsistent pleas cannot be allowed to be raise in the written statement.

9. Having heard the parties, at the outset, it is needless to mention that it is a settled law that amendment of the pleadings could be made at any stage of the proceedings. Instances are not wanting that pleadings are permitted to be amended even when second appeal is pending. In this case the suit is at the preliminary stage. The issues are yet to be framed. The amendment application was moved at early stage of the suit. Apart from this, the main relief claimed in the suit is of negative declaration based on title; whereas by virtue of the amendment the plaintiffs are trying to carve out an alternative case, that if they

fall in seeking declaration on title, then, they are entitled to claim title based on adverse possession. In this circumstances, the question is : Can such amendment be allowed ?

10. Considering the nature of amendment, I am of the opinion that the plaintiff should be allowed to amend the plaint. The Supreme Court has ruled in the case of Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, that the amendment to the plaint should be allowed, if it does not cause injustice to the defendant.

11. The Supreme Court in the case of G. Nagamma and Anr. v. Siromanamma and Ann (supra) ruled that it is settled law that the plaintiff is entitled to plead even inconsistent pleas.

12. The purpose and object of Order 6 Rule 17 of the CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. All amendments should be allowed which are necessary for the purpose of determining the real question in controversy between the parties. It is true that amendment cannot be claimed as a matter of right.

In Ma. Shwe Mya. v. Maung Mo Hnaung, it is held as under :

"All rules of Courts are nothing but provisions intended to secure to the proper administration of justice and it is therefore essential that they should be made to serve and be subordinate that purpose so that full powers of amendment must be enjoyed and should always be liberally exercised but none-the less no power has been given to enable one distinct cause of action to be substituted for another, nor to change, by amendment, the subject matter of the suit."

The Apex Court in AArundhati Mishra u. Sri Ram Charitra Panday, (supra) has laid down that It is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative pleas it could be granted. If the facts are admitted in the written statement, the relief could be granted to the plaintiff on the basis of the evidence though inconsistent pleas were raised. The Apex Court further ruled that amendment to the plaint cannot be considered on the principles as are applicable to the amendment of written statement as both are governed by different set of rules. Considerations are different. In the same judgment, in paragraph-4, the Apex Court held that the pleas based on title and adverse possession are mutually inconsistent can always be taken in the plaint but cannot be allowed to be raised in the written statement. In order to support the said view, the Apex Court borrowed support from the Three Judge Bench judgment of the Apex Court in Srinivas Ram Kumar v. Mahabir Prasad. and observed as under :

"It is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea it could be granted. If the facts are admitted in the written statement, the reliefs could be granted to the plaintiff on the basis of the evidence though inconsistent pleas were raised. Amendment

to written statement cannot be considered on the same principle as an amendment to the plaint. The pleas in the written statement may be alternative or on additional ground or to substitute the original plea. It is equally settled law that amendment of the pleadings could be made at any stage of the proceedings. Instances are not wanting that pleadings are permitted to be amended even when second appeal is pending."

The learned Counsel for the respondent tried to contend that there is a conflict of opinion between decisions of the Supreme Court cited before me by the respective Counsel for the parties. As a matter of fact, I do not see any conflict of opinion between the decisions of the Apex Court. However, it has been held in *Union of India v. U. S. Subramanian*, that the High Court is bound to follow the opinion expressed by the Larger Bench of the Supreme Court. I need not involve myself in this controversy and I am of the opinion that considering the law laid down by the Apex Court, the Trial Court could not have rejected the application for amendment, at any rate, the Trial Court could not have dwelled upon the merits of the amendment.

13. It is well settled that while considering application for amendment. merits of the amendment need not be and should not be considered. In this behalf reference may be made to a decision of the Supreme Court in the case of *Suraj Prakash v. Raj Rani*, (para 7) and of High Court of Himachal Pradesh in the case of *Hari Dass v. Kali Dass*, (para 5) which reads as under:

"It is well settled that when considering whether the amendment should be allowed, the Court need not or ought not to go into the alleged falsity of the case in the amendment nor the Court ought to give its findings on the merits of the amendment sought for without first allowing the amendment, frame the issue therein and allowing both the sides to adduce evidence."

The Trial Court was, therefore, wrong in rejecting the application for amendment considering the merits thereof. This course was not permissible.

In the circumstances, the impugned order rejecting application for amendment is set-aside. Application (Ex. 49) seeking amendment to the plaint is allowed. Petitioner to carry out amendment within 15 days from the date of receipt of writ from this Court and defendant shall also be at liberty to make consequential amendment to the written statement within 15 days thereafter, if so advised.

14. Rule is made absolute in terms of prayer clause (a) with no order as to costs.