

(2024) 07 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 1721 of 2015

Nisthaben Ranchhoddas Goradia Since Decd. Through Poa
Holder & Anr. Versus

APPELLANT

Vs

Mahavirsinh Ramsinh Gohil & Ors.

RESPONDENT

Date of Decision : 23-07-2024

Acts Referred:

Constitution of India, 1950 — Articles 227

Code of Civil Procedure, 1908 — Order 6 Rule 17, Order II Rule 2

Citation : (2024) 07 GUJ CK 0051

Hon'ble Judges : J. C. Doshi, J

Bench : Single Bench

Advocate : Jamshed Kavina, S P Majmudar, Pratik Khubchandani

Final Decision : Allowed

Judgement

J. C. Doshi, J

Rule. Learned advocate Mr. Pratik Khubchandani waives service of notice of rule for the respondent State.

Heard learned advocate for the respective parties.

The instant petition is filed under Article 227 of the Constitution of India challenging the order passed below Exh.44 in Regular Civil Suit No.12 of 2009, whereby the plea of the plaintiff under Order 6 Rule 17 of the CPC has been rejected by the learned trial Court inter alia on the ground that the plaintiff has not observed due diligence or has not established that the defendants have illegally taken up the possession from the plaintiff during the pendency of the suit.

What could be noticed from the pleadings of plaint of Regular Civil Suit No.12 of 2009 (Annexure A) that the plaintiff pleaded that he is the owner of plot No.103, which was sub-divided by the plaintiff in plot Nos.103A and 103B. It is also noticed that Bhuj Urban Development Authority has also approved sub-plotting of

plot No.103. It is also noticed that plot No.103A is admeasuring 67.97 sq mtr and plot No.103B is admeasuring 71.53 sq mtr, which is approved by the Bhuj Urban Development Authority. The plaintiff came out with the suit before the learned trial Court that the defendants are trying to encroach upon plot No.103B. The injunction application comes in favour of the defendants holding that the the possession of land of plot No.103 is lying with the defendants. Except such findings, the petitioner, who is plaintiff in the suit moved an application for amendment of the plaint seeking to amend the relief to recovery the possession of plot No.103B. It has been denied by the learned trial Court.

Learned advocate for the respondent Nos.1 and 2 argued that the possession of plot No.103B is lying with the defendants since the beginning and the plaintiff was knowing fully well about this aspect and yet has not made proper relief in the plaint and therefore, now, the plaintiff cannot be permitted to amend the plaint at this juncture. The plaintiff cannot altogether change the nature, structure and relief of the suit.

I do not countenance the fathom of the arguments of learned advocate Mr. Khubchandani. Normally, the Court should grant relief of amendment so as to avoid multiplicity of proceedings. Of course, there is a rider of due diligence provided under the statute, but in the present case, this ratio is not applied as right of the party to lead evidence is not ripened.

At this juncture, I may refer to the judgment of the Hon'ble Apex Court in case of LIC of India Vs. Sanjeev Builders Private Ltd. reported in AIR 2022 SC 4256, whereby the Hon'ble Apex Court has set the parameters, which reads as under:-

"70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to

withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main

issues in controversy between the parties, the amendment should be allowed.

Now, coming back to the case on hand, what appears that the plaintiff has prayed the relief based upon the title of plot No.103A and 103B (previously it was plot No.103). In these circumstances, asking the relief of possession of plot No.103B from the defendants, according to this Court, would not change the nature of the plaint nor the cause of action nor the structure. In fact, to avoid multiplicity of proceedings, the amendment in the pleadings was required and it is justified. In the result, present petition deserves to be allowed with a cost of Rs.5000/- to be paid to the defendants.

For the foregoing reasons, present petition is allowed and impugned order dated 17.7.2014 passed below Exh.44 in Regular Civil Suit No.12 of 2009 is hereby quashed and set aside. Application Exh.44 and relief prayed thereon is allowed. Amendment to be carried out within 14 days from the receipt of writ of this order, subject to deposit of Rs.5000/- before the learned trial Court, Bhuj within the same time period, which shall be disbursed to the defendants. Rule is made absolute to the aforesaid extent.