

(2016) 04 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.8227 of 2014

Rabiya Khatoon

APPELLANT

Vs

Anjum Khatoon

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

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

Citation : (2017) 1 PLJR 171

Hon'ble Judges : Mr. V. Nath, J.

Bench : Single Bench

Advocate : Mr. Sidhendra Narayan Singh, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

V. Nath, J. - Heard the learned counsel for the parties.

2. The present application under Article 227 of the Constitution of India has been filed questioning the legal sustainability of the order dated 11.03.2014 passed in T.S.No.32/2006 by which the prayer for amendment in the plaint has been allowed.

3. The facts of the case need not be exposited in detail in view of the limited nature of the controversy at present. Suffice it to state that the plaintiff filed the T.S.No.32/2006 for declaration of title and recovery of possession over the suit property mentioned in the schedule of the plaint where the suit property has been described as 3? dhur of land of C.S.Plot No.6576 also corresponding to R.S.Plot No. 12724. The petitioner who is a contesting defendant in the suit filed her written statement resisting the grant of the relief to the plaintiff as prayed. It is not in dispute between the parties that the plaintiff led her evidence in the suit and thereafter it was closed on 01.02.2012. Similarly the evidence of the defendant after completion has been closed on 20.07.2013. On behalf of the plaintiff the petition has been filed on 24.01.2014 praying for amendment in the plaint relating to the correction of the Plot Number given in schedule of the plaint

as R.S.Plot No.12723/18699 in place of R.S.Plot No.12724. The said prayer for amendment has been allowed by the learned court below after imposing cost upon the plaintiff by the order impugned in this application.

4. Criticizing the impugned order, the learned counsel appearing for the petitioner has been emphatic that the learned court below has ignored the proviso to Order 6, Rule 17 C.P.C. while considering the prayer for amendment. It has been canvassed that the proviso is couched in mandatory form and there was no scope for allowing the amendment in the plaint after the trial has admittedly commenced and the suit has been posted for argument. The learned counsel has relied upon the decision in the case of *Vidyabai v. Padmalatha*, (2009)2 SCC 409 in support of the submission that the error of jurisdiction and material irregularity has been committed by the learned court below in passing the impugned order.

5. The learned counsel appearing for the plaintiff respondent, however, has submitted that the necessity for the amendment has arisen when the prayer for amendment of the defendant-petitioner in the written statement was allowed by order dated 09.07.2013 after the closure of the evidence of the plaintiff and during the stage when the evidence of the defendant-petitioner was being adduced. By referring to the amendment petition of the defendant-petitioner as annexed with the counter affidavit, the learned counsel has pointed out that by the said amendment the defendant-petitioner for the first time has incorporated the fact that the suit property is on Plot No.12723/18699. It has been further contended that the proviso to Order 6, Rule 17 C.P.C. does not altogether take away the discretion of the court in allowing the amendment in the pleading and the court has the jurisdiction to allow amendment after having been satisfied in its discretion that the party applying for amendment has acted with due diligence in making the prayer. It has been further submitted that the core question in the suit relates to the title of the plaintiff over the suit land and the amendment which has been allowed by the impugned order is necessary for adjudication of the real dispute between the parties.

6. After considering the materials on record and the rivalised submissions on behalf of the parties, it is manifest that the pivot of the submissions on behalf of the petitioner is the proviso to Order 6, Rule 17 C.P.C. which reads as follows:

"17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial?"

7. It does not appear from the aforesaid provision including the proviso that the jurisdiction of the court to allow amendment after the trial has commenced has altogether been taken away. Though, the jurisdiction to allow the amendment in pleading has been substantially curtailed by the proviso but still the discretion has been left in the court to allow the amendment in the pleading as prayed by a party on being satisfied that the element of due diligence precedes the prayer for amendment. In the case of Vidyabai (Supra) also their lordships while considering the nature and sweep of the proviso to Order 6, Rule 17 have observed as follows:

" 10. ? It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial?."

8. Their lordships have however further also observed as follows:

" 18. ?Reliance has also been placed by Ms Suri on Rajesh Kumar Aggarwal v. K.K.Modi, (2006)4 SCC 385. No doubt, as has been held by this Court therein that the court should allow amendments that would be necessary to determine the real question of the controversy between the parties but the same indisputably would be subject to the condition that no prejudice is caused to the other side?"

"19. ?It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint?"

9. Testing the prayer of the plaintiff-respondent for amendment on the anvil of the principles relating to Order 6, Rule 17 C.P.C. and its proviso as above, it is apparent from the averments made in the amendment petition (Annexure-1) that the need for seeking the amendment is stated to have arisen only after the defendant-petitioner have got her written statement amended and incorporated the fact that after measurement by the Amin, the fact has emerged showing the suit land to be located on Plot No.12723/18699 instead of Plot No.12724. It has been averred by the plaintiff in the amendment petition (Annexure-1) that after filing of the certified copy of the report of the Amin by the defendant, the plaintiff also got the suit land measured by Amin and thereafter has found that the suit property is standing over Plot No.12723/18699 and not on Plot No.12724. From the averments in the counter affidavit as well as annexures thereto also, it is manifest that the defendant-petitioner had been allowed by order dated 09.07.2013 to amend her written statement introducing the fact that the house

in dispute is situated in Plot No. 12723/18699 and not on Plot No. 12724 as claimed by the plaintiff. These facts demonstrably give credence to the plea of the plaintiff that the occasion to seek the proposed amendment arose only after the defendant-petitioner has got her written statement amended after the closure of the evidence of the plaintiff. Significantly enough, it is no where the case of the defendant that the plaintiff had prior knowledge of the said fact but has deliberately not taken steps for amendment earlier. The inference is, therefore, inevitable that the plaintiff as well as the defendant both had no knowledge of the exact location of the suit property at the earlier stages of the suit. In this fact situation when both the plaintiff and the defendant have got measured the suit land, admittedly much after the commencement of the trial, and the defendant has got the fact of said measurement incorporated by amendment in the written statement, the plaintiff's prayer for amendment cannot be said to be eclipsed by the proviso to Order 6, Rule 17 C.P.C. Moreover it is also transparent that the proposed amendment by the plaintiff relates only to the change of the plot number as there is averment that the khata number and the boundary of the suit plot as mentioned is correct. The proposed amendments by the plaintiff is more akin in nature to a 'consequential amendment' which is a judicially recognised concept as noticed by the apex court in *Gurdial Singh v. Raj Kumar Aneja*, A.I.R. 2002 SC 1003.

10. Considering the matter from another angle also it is well settled by now that a prayer for amendment should be allowed if the same is necessary for the purpose of determining the real questions in controversy between the parties. In the present case when the defendant-petitioner after the amendment has herself accepted in the written statement that the house in dispute is on Plot No.12723/18699, there is no scintilla of doubt left that the real question in controversy between the parties in fact relate to right, title and interest over that house property located on Plot No.12723/18699. Though, it is apparent from the admitted facts that both the parties have led their evidence in the suit which has been posted for argument but that itself cannot be a ground for refusing the amendment as prayed. The principle in this regard has been succinctly laid down by their lordships in *Surendra Kumar Sharma v. Makhan Singh*, (2009) 10 SCC 626 as follows:

" 5. 'As noted here in earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6, Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be

allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment?"

(emphasis supplied)

11. It would also be seemly here to reminisce the observation by the apex court in *Rajesh Kumar Aggarwal v. K.K. Modi*, (2006)4 SCC 385 where their lordships have ruled as follows:

" 18. ?As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused?????"

It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court?."

(emphasis supplied)

12. The similar principle has been reiterated in *North Eastern Railway Administrator v. Bhagwan Das*, (2008)8 SCC 511 as follows:

" 16. ?Insofar as the principles which govern the question of granting or disallowing amendments under Order 6, Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6, Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleadings had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar*)?"

13. In view of the aforesaid authoritative pronouncements by the apex court which are all after the amendment in Order 6, Rule 17 C.P.C. incorporating the proviso therein, and in the facts and circumstances of the case as discussed above, this Court in exercise of its jurisdiction under Article 227 of the Constitution of India does not find sufficient reasons to interfere in the discretion exercised by the learned court in allowing the amendment in the plaint as prayed by the plaintiff by passing the impugned order.

14. This application is, accordingly, dismissed.