
(2008) 05 RAJ CK 0091
In the Rajasthan High Court

Shanti Lal Bagrecha

APPELLANT

Vs

Moti Lal (Deceased) through LR and Another

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2008) 05 RAJ CK 0091

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this writ petition, the defendant-petitioner facing a suit for eviction and recovery of mesne profits (Civil Original Suit No. 53/2004), seeks to challenge the order dated 18.02.2008 passed by the Civil Judge (Junior Division), Mavli, District Udaipur allowing the prayer for amendment of the plaint as made by the plaintiff-respondent for correction of the date of commencement of tenancy from "14.12.1998" to "14.12.1978"

2. Assailing the order aforesaid, learned Counsel for the defendant-petitioner has strenuously contended that the learned Trial Court has acted illegally in allowing the prayer for amendment of the plaint after substantial progress of the trial where the plaintiff has already concluded his evidence and three witnesses of the defendant have also been examined. Learned Counsel submitted with reference to the decision of this Court in the case of Karam Chand v. Ashok Kumar 2000 (4) RLW 58 that the amendment defeating the accrued legal rights of the petitioner could not have been allowed; and further submitted with reference to the decision of the Hon'ble Supreme Court in the case of Ajendraprasadji N. Pande and Anr. v. Swami Keshavprakeshdasji N. and Ors. 2007 (3) RLW 1790 that after commencement of trial, such amendment of the plaint could not have been allowed when the plaintiff has failed to show that despite due diligence the matter could not be raised earlier. Learned Counsel submitted that the plaintiff

has taken specific pleadings in his plaint duly verified and supported by affidavit that the shop in question was let on 14.12.1998 and such specific pleading cannot now be altered by way of amendment particularly when the parties have gone to trial with reference to such pleadings of the plaintiff and the petitioner would suffer prejudice if the amendment were allowed at the fag end of the trial.

3. Having examined the matter in its totality, this Court is unable to find any jurisdictional error in the case that could be said to be leading to substantial failure of justice so as to consider interference in writ jurisdiction.

4. The deceased plaintiff Motilal (now substituted by his son Ugamlal - respondent No. 1 herein) while seeking a decree for eviction and mesne profits against the present petitioner Shantilal did take the pleadings in the plaint (Annex.1) that the premises in question were let to the defendant-petitioner for 11 months after an oral agreement on "14.12.98" at the rent of Rs. 113/- per month that was now payable at Rs. 261/- per month. The plaintiff stated that the rent up to the month of April 2004 had been paid and alleged that by serving a notice dated 14.04.2004, the tenancy was terminated with effect from 14.05.2004 or any date after one month from the date of notice that the defendant would consider to be the last date of the month of tenancy. The defendant-petitioner in his written statement (Annex.2) has not denied the relationship of landlord and tenant but has replied in relation to the averments as taken in paragraph 2 of the plaint that the suit shop was not taken on rent on 14.12.1998 but was taken in the year 1980 and a rent note was also executed. The petitioner has also questioned the basis of the claim for rent at the rate of Rs. 261/- per month; and has averred that in spite of notice, no other record pertaining to tenancy was shown to him except a document of the year 1980. The petitioner has denied the averments regarding termination of tenancy and has also stated that there had been exchange of certain propositions between the parties for the plaintiff selling the shop in question to the him but the deal having not materialized.

5. It appears from the order-sheets (Annex. 6) that though the petitioner put his appearance in the suit on 10.08.2004 but filed his written statement only on 23.09.2005. The learned Trial Court, by its order dated 18.03.2006, took such belatedly filed written statement on record in the interest of justice. Thereafter, for the plaintiff having expired, his legal representative, the present respondent No. 1, was substituted as plaintiff on 04.07.2006. Several adjournments were granted in the suit proceedings allowing the petitioner opportunities to substantiate his prayer for depositing the amount of rent in the Court; and ultimately, on 19.03.2007, the learned Trial Court rejected such a prayer of the petitioner with the observations that the proceedings being under the Transfer of Property Act, there was no such provision whereunder the rent could be ordered to be deposited in the Court. This very day, i.e., 19.03.2007, issues were framed and on the next date, i.e., 01.05.2007, the plaintiff examined three witnesses and concluded his evidence.

6. It is noticed that after closure of the plaintiff's evidence on 01.05.2007, the matter was adjourned on the next date i.e., 05.07.2007 as the parties stated likelihood of a compromise. Again, on 04.08.2007, though the Presiding Officer was not available but the matter was adjourned for filing of compromise. Then, an adjournment was granted on 20.07.2007 for defendant's evidence and on the next date i.e., 30.10.2007 three witnesses were examined on behalf of the defendant. On this very date of hearing, i.e., 30.10.2007, the application for amendment (Annex.4) was moved on behalf of the plaintiff with the submissions that due to typographical error in paragraph 2 of the plaint, the relevant date "14.12.78" came to be stated as "14.12.98". It was further submitted that in the notice served by the plaintiff and so also in the rent note, only the date "14.12.78" had been mentioned; and the error has occurred only for a typing mistake. The plaintiff, therefore, prayed for permission to state the date "14.12.78" in paragraph 2 of the plaint, in place of "14.12.98".

7. The defendant-petitioner put the application to contest by filing reply (Annex.5) with the submissions that he has already raised objection about the date as stated in the plaint but then, the plaintiff has verified the plaint averments on the basis of his personal knowledge and if 14.12.1978 were the correct date, such verification would not have been made; and that issue No. 1 has been framed on the basis of the averments of the plaintiff who has led and closed his evidence keeping the right of rebuttal reserved and thereafter, the defendant-petitioner has also examined three witnesses. The petitioner submitted that if were a case of typographical error, the same could have been corrected after filing of the written statement or at the time of framing of issues and such amendment cannot be allowed at this stage. The petitioner, however, submitted that the alleged rent note bearing the date 14.12.1978 has been of the monthly rent at Rs. 113/- whereas the suit was filed claiming the rent at Rs. 261/- per month but no rent note has been filed in that regard.

8. The learned Trial Court has proceeded to allow the application for amendment with the observations that the plaintiff PW-1 has stated in his evidence that the date in question was wrongly stated in the plaint, the correct one being 14.12.1978; that the documents filed by the plaintiff also support the plea about the correct date being 14.12.1978; and that the defendant, while deposing as DW-1, has admitted that the shop in question was taken by him on rent from the deceased plaintiff in the year 1978 at Rs. 113/- per month. The learned Trial Court has, therefore, found correct the submission of the plaintiff that it were a case of typographical error and observed that allowing such amendment would neither be of any adverse effect in the trial of the suit nor would cause prejudice to the defendant.

9. The consideration as adopted by the learned Trial Court in allowing the prayer for amendment cannot be said to be irrelevant and the impugned order does not appear unjustified. That the tenancy commenced from 14.12.1978 is a fact in this case not calling for much dispute. The plaintiff has pointed out in his

application seeking amendment (Annex.4) that 14.12.1978 is the relevant date of commencement of tenancy and this very date is stated in the notice and so also in the rent note. The defendant has not disputed such facts and rather has stated in paragraph 5 of the reply (Annex.5) that the alleged rent note of 14.12.1978 states monthly rent at 113/- per month and other way round, has raised the question as to how the plaintiff was claiming rent at Rs. 261/- per month. The learned Trial Court has pointed out that the plaintiff has stated in his deposition that the date has wrongly been mentioned in the plaint, correct one being 14.12.1978. Significantly, the learned Trial Court has further pointed out that the defendant has admitted in his deposition as DW-1 that the tenancy commenced in the year 1978.

10. With reference to the material available on record, when the defendant being the tenant in the suit premises is not in dispute; and the defendant would admit the tenancy having commenced in the year 1978; and the documentary evidence indicate the date of commencement of tenancy as the Fourteenth day of the month of December in the AD year Nineteen "Seventy" Eight, the date as mentioned in the plaint in figures to read Fourteenth day of the month of December in the AD year Nineteen "Ninety" Eight could only be treated a typographical error. The date has been stated in the plaint as "14.12.98" though it was intended to be "14.12.78"; and there appears no reason why such typographical error cannot be corrected by way of amendment.

11. The cited decisions do not lend support to the submissions as made on behalf of the petitioner in this case. There arise no question of defeating any accrued legal right as was the matter in Karam Chand's case (supra) where the defendant-tenant sought amendment at the appellate stage to incorporate alternative plea of partial eviction contrary to the admission made in the original written statement denying feasibility of partial eviction.

12. In Ajendraprasadji (supra) the Hon"ble Supreme Court found that the prayer for amendment was made by the defendants after three witnesses had been examined although the matters sought to be introduced by way of additional written statement were known to the defendants and no grounds were raised in the application for amendment that despite exercise of due diligence such matter could not have been raised. After examining the history of the proceedings in the suit in question, the Hon"ble Supreme Court found that the defendants were lacking in bona fide and that the amendment would cause serious prejudice to the plaintiff. It was also found that by way of amendment a totally new and inconsistent case was sought to be introduced.

13. In the present case, as noticed above, there arise no question of any prejudice to the petitioner and the amendment sought for remains in conformity with the material already available on record including the statement of the petitioner himself. In the totality of circumstances, the present plaintiff-respondent No. 1 does not appear lacking in bonafide while making prayer for amendment to correct a typographical error.

14. The requirement of proviso to Rule 17 of Order VI of the CPC is of not allowing the application for amendment after commencement of trial unless the Court is satisfied that the matter could not have been raised by the party concerned before such commencement in spite of "due diligence". So far the aspect of "due diligence" is concerned, the same is required to be examined with reference to the facts and circumstances of each case. As pointed out by the Hon'ble Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the object of introduction of the said proviso to Rule 17 of Order VI CPC is to prevent frivolous applications which are filed to delay the trial. In the case of the present nature, relating only to a typographical error, the ground reality cannot be ignored that possibility of such an error is not ruled out even after taking reasonable care and caution and despite exercising due diligence. Obviously, the requirement of satisfaction of the Court with regard to the question of due diligence cannot be taken in the matters of typographical errors to an impractical level that the litigant ought also to have made a perfect proof- reading of the printed matter. The present one does not appear to be a frivolous application; and has rightly been allowed.

15. The submission about the fact stated in the plaint having been verified and affidavit in support thereof having also been filed are of no substance once it is found that the matter is not of any material alteration of the facts but only of correction of typographical error. It cannot be laid down as an absolute proposition that the verification and affirmation on oath would bind the party even to the typographical errors and that such errors are beyond repair. Though verification and affirmation on oath are obviously binding on the party but essentially in relation to the substance of the matter and it cannot be accepted that if a typographical error occurs in the pleadings, the same would remain beyond explanation and clarification, and correction, if need be. For determination of the questions involved a civil litigation, the Courts look at the substance of the matter and not on error here and mistake there.

16. In the present case, it is of course noticed that there had been some laxity on the part of the plaintiff because the defendant in his written statement put the date of commencement of tenancy to dispute and then, the present plaintiff stated in his deposition as PW-1 that the date had incorrectly been scribed in the plaint. However, as noticed, after closing of the plaintiff's evidence on 01.05.2007, on the next two dates of hearing likelihood of compromise between the parties was stated before the Court. Then, an adjournment was granted on 20.07.2007 for defendant's evidence and on the next date i.e., 30.10.2007 the defendant's witnesses were examined and this very day, the application for amendment was moved by the plaintiff. In the totality of the facts and the surrounding circumstances of the case, this Court is satisfied that even when the plaintiff cannot be said to be thorough and careful, he cannot be dubbed as indifferent and lacking in bona fide. So far the subject-matter of the amendment is concerned, such error could have occurred even with requisite diligence; and its correction does not appear hit by proviso to Rule 17 of Order VI CPC.

17. It is noticed further that the pleadings in this case are not exactly in conformity with the requirements of the rules of procedure inasmuch as the dates, sums and numbers in the plaint (and so also in the written statement) have only been expressed in figures but not in words. But again, while looking at the real questions in controversy, the Court would not shut a litigant out on such flaws and errors; and whenever necessary, the pleading could be ordered to be corrected to bring out material facts for effective determination of real dispute. Looking at the substance of the matter, this Court does not find any reason to consider interference in this matter.

18. There is yet another aspect of the matter wherefor this writ petition does not merit admission. With amendment to the CPC by the Amendment Act of the year 1999, particularly with alteration in the scheme and operation of Section 115 of the Code of Civil Procedure, interference under Article 227 of the Constitution of India is, sparingly, considered in the matters relating to the orders passed by the subordinate Courts during the course of a civil litigation in such kind of cases where the impugned order might lead to substantial failure of justice or to such injury that could be said to be irreparable one to a party to the litigation; or the matters of the like nature. Having regard to the overall facts and circumstances, the exercise of jurisdiction by the learned Trial Court in the present case, of allowing correction of typographical error in the plaint, cannot be said to be leading to any injustice what to say of substantial failure of justice.

19. The writ petition fails and is, therefore, rejected.

20. Scanning through the material placed on record it has been noticed that issue No. 1 in this case has been framed with reference to the date "14.12.1998" on the basis of the pleadings of the plaintiff as then existing. With aforesaid amendment having been permitted and the date having been corrected in the plaint to "14.12.1978", the Trial Court ought to have corrected the frame of issue No. 1. The Trial Court may do so forthwith, if not done so far.

21. A copy of this order be sent to the Trial Court.