

(2001) 12 PAT CK 0034

In the Patna High Court

Case No : Civil Revision Nos. 595 and 723 of 2001

Shree Krishna Prasad and Others

APPELLANT

Vs

Ghan Shyam Gupta and Others

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Citation : (2001) 12 PAT CK 0034

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The orders challenged in these Civil Revisions have been passed in the same suit (Title Suit No. 42 of 1985) and as such they have been heard together and are being disposed of by this common order.

2. Same set of Defendants are Petitioners in both the cases. Civil Revision No. 595/2001 has been filed against the order dated 19.12.2000, whereas, Civil Revision No. 723/2001 has been filed against the order dated 16.1.2001. By both the orders, amendments as sought for by the Plaintiff-opposite parties in the plaint of Title Suit No. 42 of 1985, have been allowed after passing of the preliminary decree and the matter is pending for preparation of the final decree.

3. The Plaintiff-opposite parties filed the aforesaid suit for declaration that the earlier decree passed in T.S. No. 64/1957 on the basis of the compromise entered into between the parties and the two deeds of gift executed by Ayodhya Prasad in favour of the two Defendants, namely, Rajesh Kumar and Rakesh Kumar Gupta were null and void and not binding on the Plaintiffs and for partition of Schedules 1 and 2 properties of the plaint. The Petitioners in those Civil Revisions, who were Defendants No. 6 to 8, filed written statement and resisted the claim of the Plaintiffs. Their defence, inter alia, was that there was no unity of title and possession as partition was already effected earlier. Both the parties led evidence and on 23.2.2000 the suit was decreed and against the said decree the Defendant-Petitioners have filed First Appeal No. 246 of 2000, which is pending in this Court.

4. On 7.11.2000, the Plaintiffs filed an application under Order 6 Rule 17 of the CPC (hereinafter referred to as "the Code") for amendment of the plaint. It was stated, in the said petition that the Plaintiffs are the junior members of the family and some of the lands acquired from the joint family fund were left out in the plaint. The acquisitions were made before the institution of the suit and they were standing in the name of Kamaldeo Prasad (father of the Plaintiffs), Sri Ayodhya Prasad (grand father and common ancestor) and Rajesh Kumar (Defendant-Petitioner No. 2 herein). The Defendant-Petitioners filed rejoinder to the said petition, wherein they stated that the Plaintiffs have also left out certain joint family properties. It is further stated that the properties, which the Plaintiffs wanted to be added by way of the amendment in the plaint, are self acquisition of the Defendants. They also raised objection that after passing of the preliminary decree and before preparation of the final decree, the court below after having considered the matter by order dated 19.12.2000 allowed the amendment petition, against which Civil Revision No. 595 of 2001 has been filed.

5. On 2.1.2001, the Plaintiffs again filed a petition for amendment under Order 6 Rule 17 of the Code, wherein they again said that some of the acquisitions of the joint family were left out in the plaint and they should be added in the plaint. They also wanted to effect correction of certain mistakes in the descriptions of the property given in the plaint and some of the property have been doubly entered in the plaint. They also prayed that as the Defendants objected in their earlier rejoinder that the lands of village Chakbara, Bhartuean and Barmadia were not added in the plaint, the same should be also added and the court below, after hearing the parties by order dated 16.1.2001, allowed the amendment, against which Civil Revision No. 723/2001 has been filed.

6. Learned Counsel for the Petitioners submitted that once the preliminary decree has been passed, against which an appeal is pending in this Court and the matter was pending before the court below for preparation of the final decree, the trial court has no power to allow the amendments of the plaint.

7. The suit, out of which the matter arises, is a suit for partition. Order 6 Rule 17 of the Code permits amendment of the plaint at any stage of the suit for the purpose of determining the real question in controversy. Thus, an amendment can be allowed at any stage of the proceeding either during the course of trial or even in appeal. The relevant consideration for allowing the amendment is that the same is necessary for determining the relevant question and for just decision of the case and the proposed amendment neither changes the nature of the suit nor does it put the other side in such a position that he cannot be compensated by way of cost or the same has been made not in good faith.

8. So far as the suit for partition is concerned, it is well-settled that more than one preliminary decree can be passed and the pendency of the appeal against one preliminary decree does not debar the court from passing further preliminary decrees, against which an appeal can be filed, while the matter is pending at the stage of preparation of final decree. In this connection, a reference may be had

of a decision of the Supreme Court in the case of Phoolchand and Another Vs. Gopal Lal, wherein it has been held as follows:

We are of opinion that there is nothing in the CPC which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. We have already said that it is not disputed that in partition suits the court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of parties to the suit on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights; if so, there is no reason why a second preliminary decree correcting the sharers in a partition suit cannot be passed by the court. So far therefore as partition suits are concerned, we have no doubt that if an event transpires after the preliminary decree, which necessitates a change in shares, the court can and should do so; and if there is a dispute in that behalf, the order of the court deciding that dispute and making variation in sharers specified in the preliminary decree already passed is a decree in itself which would be liable to appeal.

9. The question for consideration in these cases is as to whether while the matter is pending for preparation of final decree after passing of a preliminary decree, the amendment can be allowed or not? There is nothing in the Code," which prohibits amendment of the plaint adding certain properties while the matter is pending for preparation of final decree. If certain properties are left out and the Plaintiffs bring the same on the record then the court after hearing the parties may, on coming to the conclusion that the properties are joint family properties and liable to partition, add the same with a view to shorten the litigation otherwise for the same a fresh litigation has to be gone into. The view taken by me finds support from the judgment of a learned Single Judge of this Court as well as of other High Courts.

10. In the case of Somireddi Burrayya and Others Vs. Somireddi Atchayamma, after passing of the preliminary decree, the suit was pending for preparation of the final decree and the Plaintiff wanted to substitute certain properties, which were opposed by the Defendant, the objection was overruled and it was held that the court has power to allow the amendment in exercise of power under Order 6 Rule 17 and Section 153 of the Code.

11. In the case of Awadhendra Prasad v. Raghubansmani Prasad, reported in AIR 1979 Pat 50 : 1978 PLJR 654, it was held that the amendment of the plaint is possible even after preparation of the preliminary decree. Relying upon the said decision in the case of Awadhendra Prasad (supra), a learned Single Judge of this Court in the case of Tripurari Mishra Vs. Most. Rajpati Devi and Others, held that

in a case where the nature of the property is a joint property, the amendment is permissible, but when there is a dispute about the nature of the property, such course is not available.

12. As stated above, the partition suit does not come to an end after passing of the preliminary decree and it continues till the preparation of the final decree. More than one preliminary decree can be passed according to the facts of the case. If certain properties have been left out and the Plaintiffs wanted to add the same then the court may add the same and in case of dispute it may decide the dispute but only because the nature of the property has been disputed by the other side it cannot be said that, the amendment is not permissible. This view has to be taken with a view to shorten the litigation. Once the court decides the controversy on account of raising of an objection as to the nature of the property, it cannot be held that the amendment is not permissible. In that case, the court after allowing the amendment may determine the nature of the property and the decision in that matter will amount to a preliminary decree, subject to appeal.

13. Coming to the facts of the present cases, it appears that the Defendant-Petitioners have no objection to allowing of the amendment with regard to the correction of descriptions of the plots and they have only raised objection with regard to certain amendments at items No. 8, 9 and 10 of the subsequent amendment petition, which was not pressed by the Plaintiffs. Some of the lands of the three villages were added, which the Defendants wanted to be added as appears from their petition filed as a rejoinder to the earlier amendment petition. Thus, I find that the court below having satisfied that the amendments sought for by the Plaintiffs do not change the nature of the suit nor have they taken the other side by surprise, on the other hand, the same were necessary to settle the controversy in the suit, has allowed the amendments.

14. For the reasons aforementioned, I do not find any error, much less jurisdictional error, in the impugned orders passed by the court below warranting interference therewith and, accordingly, both the Civil Revisions are dismissed.