

(1978) 05 PAT CK 0006
In the Patna High Court
Case No : Civil Revision No. 540 of 1977

Siya Ram Das and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 11-05-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Specific Relief Act, 1963 — Section 34

Citation : AIR 1979 Patna 98

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : S.S. Dwivedi and B.S. Tewary, for the Appellant; Umeshwar Pd. Singh, Yadubans Giri and B.P. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Madan Mohan Prasad, J.—This is an application directed against an order rejecting an application for amendment of a plaint made under Order VI Rule 17 of the Civil P. C (hereinafter to be referred to as "the Code").

2. It appears that the plaintiff filed the present suit in the year 1967 for a declaration ""that the disputed land with trees was previously the Brit tenure of the plaintiff and is now the occupancy land of the plaintiffs under the provision of Land Reforms Act and is in possession of the plaintiffs....." He further prayed for a declaration that the order passed by the Block Development Officer assessing the rent of the disputed land in the names of defendants 2 and 3, is illegal, void and without jurisdiction and not binding upon the plaintiffs.

3. Briefly stated, the plaintiff's case is that the property in suit belonged to his Guru who was the Mahanth and after him he stepped into his shoes and came into possession of the property left behind by him; that Babu Jharu Das was a devotee of the late Mahanth and defendants 2 and 3 are his sons; that at the time of vesting of zamindari the aforesaid two defendants were acting as pairvikar of the plaintiffs but dishonestly they took advantage of the situation

and got themselves recorded as raiyats in respect of the lands in dispute. As a result, a cloud was cast on the title of the plaintiff. Hence the suit.

4. On the other hand, the defendants' plea was a denial of the status of the plaintiff as the chela of the late Mahanth, and according to them, their father Jharu Das had purchased the property by an oral sale. Thus they claimed title and possession of the land as such,

5. At the trial the parties joined issues on the following questions :--

(i) Is the suit as framed maintainable?

(ii) Have the plaintiffs got cause of action for it?

(iii) Have the plaintiffs got right, title and interest over the suit property?

(iv) Is the story of oral sale as set up by the defendants correct?

(v) To what relief, if any, are the plaintiffs entitled?

The parties adduced evidence on these points. During the course of argument, however, a fresh point was raised as to whether the suit was maintainable in view of Section 34 of the Specific Relief Act. At this stage the plaintiff filed the present application for leave to amend the plaint. By this application the plaintiff sought permission to amend the plaint by adding a relief for confirmation or, in the alternative, for recovery of possession of the disputed land. He offered to pay ad valorem court-fee as well.

6. The court below rejected the prayer mainly on the ground that the petition had been filed late after the arguments in the case had been made. Secondly that since there was an objection to the maintainability of the suit raised as early as in the written statement, and further in view of the statement in the written statement that the plaintiff was not in possession but the defendants were, it is not a case of bona fide mistake on the part of the plaintiff to omit the relief prayed for. Thirdly, that the aforesaid amendment would change the nature of the suit.

7. Counsel for the petitioners has urged that the court below has illegally refused to exercise jurisdiction in the circumstances mentioned above and the grounds therefore are not tenable in law. It has been contended in this respect that the delay in filing the petition was not by itself a ground on which the court below should have rejected the prayer. Secondly, it is said that the objection with regard to the maintainability of the suit was a vague and general statement and the actual objection with regard to the suit being hit by Section 34 of the Specific Relief Act was not raised at any point of time earlier than the stage of arguments. Thirdly, it is said that a mere addition to the relief, for confirmation or recovery of possession, could not change the nature of the suit.

8. Before I discuss the points raised I would do well to indicate for the purposes of the guidance of courts below, the considerations which have to be borne in

mind by any court in accepting or refusing a prayer for leave to amend a plaint or written statement. Firm I should wish to draw attention to the language of Rule 17 of Order VI of the Code itself. Although there are numerous cases where it has been held that in view of the aforesaid rule containing the words "at any stage of the proceedings", a petition can be filed at any stage before Judgment, courts below still Call to keep this consideration in mind. It is well settled that the discretion of the court in this respect is very wide and a pleading may be allowed to be amended even at the appellate stage. Of course, the court has to keep other considerations as well in mind. For instance, whether this would take away any valuable right which has accrued to the other party. But that apart, the mere fact that an application for leave to amend a plaint or written statement has been filed at a Late stage of the suit is not by itself a proper ground for rejecting the prayer. The second point which I wish to draw attention to, is that while determining the question as to whether the pleading should be allowed to be amended, courts must bear in mind the point that the amendment must be necessary ""for the purpose of determining the real questions in controversy between the parties", as stated in Rule 17 itself. In this connection it is hardly necessary to state that when a litigant comes to court and the parties join issues, the very purpose of framing issues being to determine the points at which the parties are at controversy, if in a case the real question in dispute is not raised as in an issue and if the same Ls raised at a later stage, the purpose of a court being to decide the real dispute between the parties, it will not be injustice to either party to take into consideration the real question in controversy.

9. Having said that, I feel tempted to point, attention to what was said long time ago that the rules of procedure are after all handmaid to the administration of justice. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by narrow or technical limitations (see Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon,). Shah J., speaking for the court said (at p. 1269):

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party unless it is specified that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of cost. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be allowed without injustice to other side."

Similar words were uttered by Lord Justice Lopes in the case of Weldon v. Neal reported in (1887) 19 QBD 394 The learned Lord Justice said :--

"I think the court ought to give all reasonable indulgence with regard to amending and I quite agree with the rule that has been laid down, namely, that, however negligent or careless the first omission and however late the proposed

amendment, the amendment should be allowed if it can be allowed without injustice to the other side."

It will appear that our Supreme Court has adopted the very principle which we find enunciated in the case of *Weldon v. Neal* (supra).

10. In the aforesaid background I will consider now the points raised in this case. With regard to the first ground taken by the court below, I have already observed earlier that the mere fact that the petition was filed at a late stage is not a ground for rejecting the prayer for amendment of the pleading. It may be an omission or it may be negligence, the fact cannot, however, be gainsaid that if the pleading is being amended with a view to bring to the surface the real controversy at issue between the parties and to ask the court to adjudicate thereupon, even though the petition was filed late, it ought not to have been refused on the ground of its late filing.

11. The same observation applies to the second ground urged by the court below to the effect that the plaintiffs did not take care to amend the plaint at the earlier stage when the written statement pleaded that the defendants were in possession and not the plaintiffs. I do not find any good reason to accept the conclusion of the learned Munsif when he says that his conduct shows that the mistake on the part of the plaintiffs was not bona fide. It may be that it was a negligence on the part of the counsel that the amendment petition was not filed soon after the filing of the written statement, but that will not make it mala fide. In the present case it would appear that the plaintiff said that he was in possession of the property in dispute and thus all that he wanted was a declaratory decree. True, the defendants came up to say that they were in possession and not the plaintiff. It was open to the plaintiff and, perhaps, if he had been diligent he would have filed the petition at that very time but one does not know why the plaintiff was not so advised. The advice to amend the plaint came only at a stage when specifically the defendants raised the point with regard to maintainability of the suit in view of Section 34 of the Specific Relief Act. It must be kept in mind that this objection was not specifically raised in the written statement. It never occurred to the parties till then. I have purposely quoted the issues which were framed to show that no issue was raised on this specific ground; nor was any issue raised with regard to the possession either of the plaintiffs or of the defendants. I am, however, informed by the counsel for the parties that evidence has been adduced by both parties on the question of possession and it was on the basis of such evidence that it was argued that the plaintiffs not being in possession the suit was hit by Section 34 of the Specific Relief Act. If there was no issue raised regarding possession, there was no question of parties leading evidence unless it was with a purpose to show that a mere declaratory suit could not lie and if that were the intention, then an issue with regard to the maintainability of the suit u/s 34 of the Act should have been framed. When the point was specifically raised, it occurred to the plaintiff to make a prayer for amendment of the plaint. In such circumstances, I am unable

to understand as to how it can be treated as mala fide.

12. Counsel for the petitioners has placed great reliance on a Bench decision of this Court in the case of Sheopujan Rai Vs. Kesho Prasad Singh, , In that case the learned Judges held that where a plaintiff has framed a suit bona fide believing that consequential relief is not open to him and that he is entitled to a declaration, the court would be justified in allowing him to amend the plaint even in appeal. The learned Judges placed reliance on a decision of the Calcutta High Court in the case of Deokali Koer v. Kedar Nath (ILR (1012) 30 Ca 704) Mullick, J. further observed : --

"Therefore I do not think it is an inflexible rule that, no amendment can be allowed if the plaintiff has notice in the trial, court of the defendant's objection that the frame of the suit is bad.""

In the aforesaid case the plaintiff had asked simply for a declaration on the footing that he was in possession. The trial court had found in his favour. In appeal the District Judge had found against him. In such circumstances, he had made a prayer for amendment of the plaint in this Court so that it may conform to the provisions of Section 42 of the Specific Relief Act. The other decision on which learned counsel placed reliance is in the case of Sehdev Seth Vs. Smt. Vidya Wati Seth and another, The facts of that case were also similar. The plaintiff had asked for merely a declaratory decree on the ground that she was in possession. Subsequently she had made a prayer for adding a relief of possession to the plaint. In that case, the application for amendment was filed at a late stage about five years after the institution of the suit. The objection on the ground of late filing was repelled and reliance was placed on the decision in the case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, . The learned Judge observed that in the circumstances of that case no valuable right had accrued to the defendants and the delay in filing the petition for amendment would thus not cause any injury which could not be compensated by cost. 13. I will now come to the last point as to whether the nature of the suit would change by allowing the amendment prayed for. What is meant by a nature of the suit is not difficult to understand and yet sometimes the line between one and the other is so thin that it becomes difficult to distinguish one from the other. Here is a case where a mere declaratory decree had been prayed for and now it is sought to be made into a suit for possession. Prima facie, as urged, a suit for mere declaration is different from a suit for a declaration with a consequential relief. I venture to think, however, that the conclusion aforesaid, even though prima facie, is arrived at because the true criterion for determining the nature of the suit is not employed,

A suit in respect of one cause of action does not become different in nature unless the cause of action subsequently introduced is itself of a different nature. It may be that on the same set of facts the cause of action arises which may leave scope for more than one relief to be prayed for. Where the suitor has asked for one relief and not the other, and next asks for the other, the cause of action

cannot merely on that account be said to become different. Where, however, certain more facts are introduced on the basis of which a new cause of action arises, and if they are sought to be introduced and a fresh relief on their basis is asked for it would undoubtedly be a new cause of action. In the case of *A.K. Gupta and Sons Vs. Damodar Valley Corporation*, the learned Judges of the Supreme Court said that the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action, but it is well recognised that where the amendment amounts to no more than a different or an additional approach to the same facts the amendment will be allowed even after the expiry of the statutory period of limitation. The learned Judges further said that the expression "cause of action" does not mean every fact which is material to be proved, to entitle the plaintiff to succeed and that expression means "a new claim made on a new basis constituted by new facts". Their Lordships further said "the words "new case" have been understood to mean "new set of ideas", *Dornan v. J. R. Ellis and Co. Ltd.* (1962) 1 All ER 303 This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time." In this view of the matter, the question arises whether by virtue of praying for a relief for confirmation or recovery of possession the nature of the suit changes.

14. In my view, it is mere addition of a new relief which was not prayed for on the statement that the plaintiffs were in possession and no such relief was necessary or open to the plaintiffs. In this connection I would refer to the decision in the case of AIR 1921 50 (Privy Council) The suit in that case was for declaration of a right of pre-emption. No claim for possession of the property was made. With regard to part of the lands the plaintiffs themselves claimed to be in possession on their own account. Objection was taken to the maintainability of the suit on the ground of Section 42 of the Specific Relief Act. Ultimately the prayer for amendment of the plaint was made. Their Lordships of the Judicial Committee held that the court below was right in holding "however defective the frame of the suit may be, the plaintiffs" object was to pre-empt the land; their cause of action was one and the same, whether they sued for possession or not".

The aforesaid decisions lend support to the view which I have taken in the present case, In the case of *Sehdev* (AIR 1974 Delhi 234) also the learned Judge held that a claim for possession was not making out a new case but a claim based on the same cause of action, namely, the title of the plaintiff.

15. Considering the matter from all points of view, in the circumstances of the present case it appears that the only fault of the plaintiff was not to ask for a decree for confirmation or recovery of possession on the ground that the plaintiff was in possession. No new fact much less new ideas or a new cause of action, are being sought to be introduced by the amendment. It merely asks for further relief of confirmation of possession in view of the objection raised by the defendants in respect of the suit being hit by Section 34 of the Specific Relief

Act. It is, therefore, not a case where the nature of the suit would be changed by the amendment.

16. An additional reason for coming to the conclusion is that it appears from the plaint that the plaintiffs claimed to be in possession. The defendants, on the other hand, as appears from the written statement, denied that and claimed to be in possession on their own account. Obviously the real dispute between the parties centred round possession. If the court were to adjudicate upon the question of possession, it is only fair that the party which succeeds in establishing its possession should get the benefit of a decree in that respect as well. It is well settled that where an amendment is necessary for a decision of the real dispute between the parties, and if that is involved in the plaint as originally framed, the amendment should be allowed. I am tempted to cite the decision in the case of A.K. Gupta and Sons Vs. Damodar Valley Corporation, once again in support of the proposition. Their Lordships there said (at p. 99):

"The amendment sought is necessary for a decision of the real dispute between the parties which is, what are their rights under the contract? That dispute was clearly involved in the plaint as originally framed. All the necessary basic facts had been stated. Only through a misconception a relief which could be asked on those facts had not been asked. It would not have been necessary to ask for it unless the plaintiff had at a late stage taken the point that the suit should fail without more in the absence of that relief. We find the present case indistinguishable from AIR 1921 50 (Privy Council)

For this reason also, therefore, I think that in the present case the amendment should have been allowed by the court below.

17. In view of the fact that the court below has misunderstood the nature and scope of the law relating to amendment and thus refused to exercise discretion, the order passed by it in this respect must be set aside. The plaintiffs are allowed to make the amendments prayed for.

18. I am informed, as stated earlier, that the parties have led evidence on the point of possession and no further additional written statement or evidence would be necessary. In any case, I leave the matter open for decision by the court below. In case the defendants so desire, they would be given a chance of filing an additional written statement and the parties may be allowed to lead further evidence, if at all necessary, on the question of possession.

19. In the result, this application is allowed.