
(2004) 09 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 673 (M/S) of 2001

Sri Rana Pratap Singh

APPELLANT

Vs

Smt. Kanaklata and Others

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 6 Rule 17, Order 6 Rule 7
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 498A

Citation : (2004) 09 UK CK 0030

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : B.C. Pandey, for the Appellant; Manoj Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sh. B. C. Pandey Senior Advocate and Sh. Manoj Tiwari for the Respondent No. 1 .

2. By the present writ petition, the Petitioner has prayed for quashing the order passed by the Court below by which the amendment has been allowed in the written statement.

Factual Aspect of the Case

3. Briefly stated the facts giving rise to the present writ petition are that the Petitioner has filed a civil suit No. 7 of 1999 in the Court of Additional Chief Judicial Magistrate praying for a divorce against the Respondent No. 1.

4. The Respondent No. 1 has filed a written statement on 03-02-2001. Petitioner has submitted that after filing the written statement the Respondent No. 1 has also lodged a F.I.R. against the Petitioner on 18-1-1999 being in Criminal Case No. 2373 of 1999 u/s 498A Code of Criminal Procedure .

5. During the pendency of the suit the Respondent No. 1 has filed the application

under:

17. Amendment of pleadings- The trial Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner as 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.

10. In view of the law laid down by the apex Court in 1998 (1) A.R.C. 1 as under:

Even that apart, the said decision of two learned Judges of this Court runs counter to a decision of a Bench of three learned Judges of this Court in the case of Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., . In that case Ray, C.J., speaking for the Bench had to consider the question whether the Defendant can be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the Plaintiff. It was held that such an inconsistent plea which would displace the Plaintiff completely from the admissions made by the Defendants in the written statement cannot be allowed. If such amendments are allowed in written statement Plaintiff will be irretrievably prejudiced by being denied the opportunity extracting the admission from the Defendants....

Consequently, it must be held that when the amendment sought in the written statement was of such a nature as to displace the Plaintiff's case, it could not allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by letter Bench of two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three member Bench of this Court taking a diametrically opposite view.

11. In 1991 (Supp.) A.W.C. 504 it has been held as under:

It is settled that amendment necessary for the purpose of determining the real questions in controversy can be allowed. No amendment should be allowed merely because the other side can be compensated by costs. Where a party has been unsuccessful on a plea, a new plea by him cannot, in my opinion, be said to be necessary for the purpose of determining the real question in controversy. It is incumbent upon the Court to see that the amendment besides being necessary for the purpose of determining the real matter in controversy, must not cause injustice to the other side. Under the cover of seeking amendment it is not open to any party to substitute a new cause of action or to change the nature of the suit or to substitute the subject-matter of the suit except when the Court thinks

it just and necessary. No attempt whatsoever was made before me to assail the findings of the Court below that the proposed amendment did not have the effect of changing the nature of the suit and cause of action. As already stated, the amendment is prima facie distinct independent of the original relief asked forthcoming in the instant case. There is a categorical finding in the impugned order that the consequential relief and the set of new facts proposed to be added in paras 6C and 6D and the will dated 15-06-1980 and gift deed dated 23-5-1959, came to the knowledge of the Plaintiff-Petitioners in the year 1980. This is clearly borne out from paragraph 7 of the proposed amendment. The Court further held that the said relief for cancellation was barred as no such suit was filed within three years from the date of the knowledge. A valuable right has accrued in favour of the Defendants, and the Plaintiffs cannot be permitted to add the proposed amendments to the prejudice of the Defendants-Respondents which was going to cause irreparable injury and injustice to them. These findings were not questioned before me inasmuch as no arguments were addressed on these aspects. A new case based upon the facts which were available to the Plaintiffs at the time of the original plaint and which were not added in the original plaint, cannot be permitted to be set up by way of amendment. Again where a fresh suit on an amended plaint would be barred by limitation, the court below is right in its view that the injury cannot be compensated by costs and the amendment in such circumstances deserves to be refused. Learned Counsel for the Petitioners failed to substantiate the plea that for the decision of the questions sought by the amendment new facts, evidence and investigation thereof were not required. There is also nothing to indicate that the Petitioners had no knowledge of the facts which are now sought to be added. The amendment was refused by the Court below for more than one reason as already stated earlier and the view taken by the court below, in my opinion, cannot be assailed on the ground of any legal infirmity. In the contrary, the order passed by the court below was just and proper.

12. In 1992 (1) A.R.C. 176 - Chandra Bhushan Singh v. Vth Additional District Judge, Azamgarh and Ors., it has been held as under:

Having considered the submissions made by the learned Counsel for the Petitioner, I do not agree with him that the proposed amendment will not change the nature of the suit and that the amendment is only trivial and on the principle of "liberal view" the amendment ought to have been allowed. It has also been held by the court in revision that allowing or rejecting the amendment will not prejudice the case of the defence. Keeping in view, the aforesaid findings recorded by both the Courts below, in my opinion, it is not a case in which the principle of adopting a liberal view to allow the amendment in the present case is applicable. To my mind, the Petitioner has not succeeded in making out a case for interference under Article 226 of the Constitution of India in the impugned orders passed by the Court below.

13. In view of the law laid down in the case of Industrial Rubber and Latex

Manufacturers and Another Vs. Bank of Baroda, , it has been held as under:

8. ...The main contention of the learned Counsel for the applicant is that the amendment sought did not change the nature of the case nor, in any way caused any prejudice to the Plaintiff. In my opinion, this submission is misconceived.

14. In a case reported in Haji Mohammed Ishaq Wd. S.K. Mohammed and Others Vs. Mohamad Iqbal and Mohamed Ali and Co., , it was observed:

the amendment of written statement sought in appeal was on such facts which, if permitted to be introduced, would have completely changed the nature of the original defence. It would have brought about an entirely new plea which was never taken up either at the time of original pleadings. The additional evidence sought to be adduced was in respect of the facts stated in the amendment petition. Held that the Court in appeal rightly rejected all the petition for amending the written statement and adducing additional evidence....

15. It has been held in Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, that suit has to be tried on the original cause of action alone. The observations are quoted below:

Now it is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of the suits but also appeals.

16. In Atma Ram Mitcal v. Ishwar Singh Punia 1988 (2) ARC 557, it has been held as under:

In our opinion, bearing in mind the well settled principles that the right of the parties crystallize to the date of the institution of the suit as enunciated by this Court in Om Prakash Gupta v. Dig. Vigendrapal Gupta (Supra) (1982) 3 SCC 491, the meaningful construction must be that the exemption would apply for a period of ten years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceedings must be instituted within the stipulated period of ten years. Once rights crystalise the adjudication must be in accordance with law.

17. In Gurdial Singh and Others Vs. Raj Kumar Aneja and Others, , it has been held that the amendment will be allowed only when it is necessary to determine the real questions in controversy between the parties. The observations of the Apex Court are quoted as under:

When one of the parties has been permitted to amend his pleadings, an opportunity has to be given to the opposite party to amend his pleadings. The opposite party shall also have to make an application under Order 6 Rule 17 CPC which, of course, would ordinarily and liberally be allowed. Such amendments are known as consequential amendments. The phrase "consequential amendment" finds mention in the decision of this Court in Bikram Singh v. Ram Baboo. The expression is judicially recognized. While granting leave to amend a pleading by way of consequential amendment, the Court shall see that the plea sought to be

introduced is by way of an answer to the plea previously permitted to be incorporated by way of an amendment by the opposite party. A new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment.

20. Some of the High Courts permit, as a matter of practice, an additional pleading, by way of response to the amendment made in the pleadings by the opposite party, being filed with the leave of the Court. Where it is permissible to do so, care has to be taken to see that the additional pleading is confined to an answer to the amendment made by the opposite party and is not misused for the purpose of setting up altogether new pleas springing a surprise on the opposite party and the Court. A reference to Order 6 Rule 7 CPC is apposite which provides that no pleadings shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

18. Relying upon the judgments of the Apex Court in *G. Nagamma and Another Vs. Siromenamma and Another*, *B.K.N. Narayana Pillai Vs. P. Pillai and Another*, *Arjun Singh Vs. Mohindra Kumar and Others*, *Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others*, *Jagdish Singh Vs. Natthu Singh*, *Bhagavatula Gopalakrishnamurthi and Others Vs. Dhulipalla Sreedhara Rao and Another*, *Gauri Shanker Vs. Hindustan Trust (Pvt.) Ltd. and Others*, *Radhika Devi Vs. Bajrangi Singh and others*, and *Dondapati Narayan Reddy Vs. Duggirddey Venkatanarayana Reddy and Others*, *G. Nagamma and Another Vs. Siromenamma and Another*, *Vineet Kumar Vs. Mangal Sain Wadhera*, *Fritiz T.M. Clement and Another Vs. Sudhakaran Nadar and Another*, *Gurdial Singh and Others Vs. Raj Kumar Aneja and Others*, *Om Prakash Gupta Vs. Ranbir B. Goyal*, *Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another*, *Smt. Ganga Bai Vs. Vijay Kumar and Others*, *Ganesh Trading Co. Vs. Moji Ram*, *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, *Siddalingamma and Another Vs. Mamtha Shenoy*, *Ragu Thilak D. John Vs. S. Rayappan and Others*, *Jayanti Roy Vs. Dass Estates Pvt. Ltd.*, *Sampath Kumar Vs. Ayyakannu and Another*, *Nagappa Vs. Gurudayal Singh and Others*, and *Hanuwant Singh Rawat v. Rajputana Automobiles, Ajmer* (1993) 1 WLC 625, it has been held in the case of *Devendra Mohan v. State of U.P.* reported in 2004 (1) ARC 504 that the amendment of the pleadings ordinarily cannot be allowed so as to completely alter the nature of the suit. It has been held as under:

The amendment is not permissible if the very basic structure of the plaint is changed or the amendment itself is not bona fide. In case the facts were in the knowledge of the party at the time of presenting the pleadings, unless satisfactory explanation is furnished for not introducing those pleadings at the initial stage, the amendment should not be allowed. Amendment should also not be permitted where it withdraws the admission of the party or the amendment sought is not necessary to determine the real controversy involved in the case.

Conclusion

19. Admittedly the suit was filed for dissolution of marriage of Plaintiff Rana Pratap (Petitioner) with the Respondent Smt. Kanaklata and now the amendment is being sought by making averments that the Plaintiff/Petitioner has illegal relations with one Km. Manorama. Such a plea is barred by the provisions of Order 6 Rule 16 as it will change the original cause of action and cannot be allowed by way of amendment.

20. So far as the amendment in paragraph 39 of the written statement is concerned, certainly it being a different cause of action, the Respondent No. 1 can be allowed to plead by way of counter-claim alone and not by way of amendment.

21. Writ petition is allowed. A writ of certiorari is issued quashing the orders contained in Annexure 5 and 7 to the writ petition.

22. No order as to costs.