

(1995) 08 GAU CK 0027
In the Gauhati High Court
Case No : Civil Revision No. 88 of 1995

Sudhir Chandra Dey

APPELLANT

Vs

Saheda Begum and Another

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

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

Citation : (1995) 3 GLR 305

Hon'ble Judges : S.L. Saraf, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee, B.R. Dey, K.K. Nandi and H. Talukdar, for the Appellant; H. Rahman, N. Sarma, M. Mahanta, D. Rajkhowa and M.K. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

S.L. Saraf, J.—This is a case where the amendment is sought by the Plaintiff Respondent. The Plaintiff has made an application for amendment of the plaint but no amendment in the body of the plaint has been sought for. The amendment relates only to amending the prayers of the plaint. In fact the Plaintiff is seeking only additional prayers to be introduced as part of the plaint. Under Order 6 Rule 17 of the CPC the Additional District Judge, Jorhat has allowed the amendment holding that if the prayer for amendment of the plaint is allowed it will not change the nature and character of the suit. By the said order the Additional District Judge has also allowed a sum of Rs. 100/- by way of cost against the Plaintiff to be paid to the Defendant. It appears from the subsequent order dated 16.2.95 that the Petitioner has accepted the cost of Rs. 100/- as per the order dated 29.11.94 but subsequently wanted to Refund the same. The said refund was not accepted back by the Plaintiff and the petition regarding the same was rejected by the District Judge. The main thrust of the argument of Mr. Bhattacharjee appearing, for the Petitioner challenging the amendment is base on a judgment and order passed by this Court in F.A. No. 24/80 arising out of

title suit No. 51/76 where the High Court has made certain observation and findings. According to Mr. Bhattacharjee in view of the said findings of the High Court no fresh prayers could be introduced in the present suit by the Plaintiff inasmuch as the said prayers shall be inconsistent with the findings of the High Court. In the said judgment the High Court has held that the Defendant/Respondent No. 2 got possession of the property in pursuance of the deed of gifts and became owner thereof. The aforesaid findings according to Mr. Bhattacharjee bars the Plaintiff in playing lot amendment of the prayers of the plaint.

2. Counsel appearing for the Respondent submits that the Plaintiff has introduced no new facts nor has set up any new case as such he is entitled to the amendment. It has been submitted that the amendment is only relating to the prayer portion of the plaint, the body of the plaint remain unaffected. If the Defendant has grievance relating to the prayer and if he contends that the prayers are inconsistent with the findings of this Hon'ble Court and are not supported by the material facts as stated in the plaint the issues can be raised and the court below shall be entitled to reject and hold the issues against the Plaintiff. At this stage, however, the court should not prevent the Plaintiff to raise new prayers in the plaint which does not effect or change the nature and character of the suit.

3. It is further submitted that the Plaintiff was not a party in a suit No. 51/78 out of which F.A. No. 24/80 arose. As such finding in the said judgment is not binding on the Plaintiff in the present suit and the Hon'ble Court be pleased to dismiss the present revision application.

4. Mr. Bhattacharjee, in support of his contention urged that the prayer portion should not be allowed to be amended relies on the judgment reported in AIR 1969 Gau 42 - Wherein it has been held:

As the plaint stands, there is no prayer for declaration of title with consequential relief and as such although an issue regarding right title, and interest has been framed, the averment in the plaint do not in any way contemplate that such declaration ought to be made.

In my opinion the said declaration is clearly distinguishable in the facts of this case. In the said decision, the prayers were sought to be amended at the appellate stage and not prior to the hearing of the suit. Further in the instant case the Plaintiff not being a party in the previous suit No. 51/76 and in the first appeal No. 24/80 arising therefrom the findings of the High Court does not bar the Plaintiff from raising fresh prayers in the suit on the basis of the material facts asserted in the plaint and amending the plaint accordingly.

5. In AIR 1928 Privy Council 208 Lord Blanesburgh at page 209 held:

A suit for specific performance or damages in the alternative can be amended so as to convert it into one for damages only. That the court should have the power

of granting such an amendment in a proper case is salutary and indeed necessary, But it is one to be most carefully and jealously exercised in all the circumstances of each individual case and with due regard to its effect upon the position of both the Plaintiff and the Defendant. If the Defendant is to be prevented by the possible exercise of the power from starving a Plaintiff out of his right the Plaintiff must not by its ill considered excuse be permitted to turn his suit into a gamble for himself at the Defendant's expenses. It would appear to be wise precaution for a Judge before allowing any such amendment in a contested case to require the plaintiff to be actually (sic) a from appropriate in action seeking compensation for breach of contract and nothing else.

Following the aforesaid decision of the Privy Council I feel in the interest of justice the court has the power of granting such amendment in an appropriate case where it is salutary and indeed necessary that the same has to be exercised most carefully and considering all the circumstances I hold that Plaintiff attempt to amend the prayers of the plaint should not be trotted at the threshold and Plaintiff should be allowed to amend the plaint. The Defendant shall have the right to contest any issues that may be raised on the basis of the pleadings including the prayers. According to me, it would not effect the merits of the case, if any by such amendment.

6. In AIR 1949 64 (Federal Court) Federal Court, held that to throw out a suit for partition on the technical ground that there is no specific prayer for administration in the plaint would not serve the ends of justice for the aforesaid proposition. The Federal Court relied on the decision of the Judicial Committee in 48 Indian Appeals page 214 which observed:

Rules of procedure are nothing but provisions intended to secure the proper administration of justice and full powers of amendment must be enjoyed should be liberally exercised to serve that purpose.

7. In the premises, I hold that for the ends of justice amendment sought for be allowed. I dismiss this Revision application and there will be no order as to costs.