

(2020) 03 RAJ CK 0123

In the Rajasthan High Court

Case No : Civil Writ Petition No. 77, 1047 Of 2020

Surendra Kumar And Ors

APPELLANT

Vs

Phulwanti Devi And Ors

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order I Rule 10, Order I Rule 10(2),
Order 6 Rule 17, Order 22 Rule 10

Citation : (2020) 03 RAJ CK 0123

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : B.S. Sandhu, Narpat Singh, Vikas Balia, Anirudh Purohit

Final Decision : Dismissed

Judgement

These writ petitions are directed against order dated 19.11.2019 passed by Additional District Judge, Pali, whereby, the application filed by the plaintiffs under Order I Rule 10(2), Order VI Rule 17 and Order XXII Rule 10 CPC read with Section 151 CPC, has been rejected.

A suit for declaration, cancellation of sale deed and permanent injunction was filed by the petitioners â?" plaintiffs in the year 2001. The suit was filed

inter alia with the submissions that the plaintiffs and defendant No.1 Smt. Phoolwanti Devi were legal representatives of Lt. Sh. Munna Lal. The

family tree was indicated in Para-1 of the plaint, wherein, it was indicated that defendant No.1 Smt. Phoolwanti Devi was wife of Lt. Sh. Jawahar Lal

S/o of Munna Lal and that the plaintiffs â?" Surendra Lodha and Suresh Lodha are sons of Lt. Sh. Munna Lal.

It was claimed that the property in question was joint and had not been subjected to partition. Certain properties were purchased by Munna Lal Ji in

the name of Lt. Sh. Jawahar Lal and other members of the Family, which belong to the joint family. The list of properties were indicated in Para-4 of

the plaint. Specific reference was made to land comprising in Khasra No.7/18, which was claimed as joint property though standing in the name of

Jawahar Lal. Allegations were made that the nature of defendant No.1 has been non-cooperative and with a view to harm the family, she got the

mutation in her name, regarding which, the plaintiffs had no information though they continued to be in possession of the land in question. Whereafter

the land in question was transferred to defendants No.2 and 3. Averments were made that plaintiffs were entitled to get the transfer deeds cancelled

for the reasons indicated in the plaint.

Thereafter further averments were introduced by way of amendment that during pendency of the suit further properties have been transferred in

favour of defendants No.6 to 8, which would be governed by the principle of lis pendens. Ultimately, it was prayed that declaration be given regarding

the jointness of the property, shares be declared, sale deeds be cancelled and injunction be granted. Whereafter on 6.2.2006, injunction was granted by

the trial court restraining the defendants from transferring the property.

Defendant No.1 Smt. Phoolwanti Devi died in the year 2015. Whereafter an application under Order VI Rule 17 CPC read with Order I Rule 10 CPC

was filed by the plaintiffs No.1 to 3 seeking amendment in the plaint. Another application was filed by plaintiffs No.4 to 8 also seeking amendment in

the plaint.

The applications came to be rejected by order dated 4.7.2019 inter alia observing that the plaintiffs have not indicated in the application as to in which

paragraphs the amendment was being sought and which sale deeds were sought to be cancelled and that the suit is pending since the year 2001, issues

were framed in the year 2004, affidavit of the plaintiff was filed in the year 2007 and the cross-examination took place in the year 2008. However,

despite passage of sufficiently long time, the amendment was not sought and, therefore, the application was rejected.

Feeling aggrieved, the plaintiffs petitioners filed S.B. Civil Writ Petition No.10776/2019, which was dismissed by this Court by order dated 22.7.2019.

Whereafter another application under Order I Rule 10(2), Order VI Rule 17 and Order XXII Rule 10 CPC came to be filed, wherein, amendments

were sought in Para-4(1)(2)(4). Prayer was made to add 11 more defendants as defendant No.10 to 20 and the sale deeds executed in their favour

indicated in proposed amendment in Para-13(i)(ii) and 13(xii) were sought to be set aside.

Another application was filed by plaintiff No.6 seeking amendments, which were similar to the amendments sought by co-plaintiffs besides setting up a

Will by Late Jawahar Lal in his favour.

The trial court by its order dated 19.11.2019 rejected the application on the ground of delay and that the transfers during the pendency of the suit

would be governed by principle of lis pendens.

It is submitted by learned counsel for the petitioners in SBCWP No.77/2020 that the trial court committed error in dismissing the application filed by

the petitioners seeking amendment. Submissions were made that the applications were filed based on subsequent events and as the defendant No.1

had died during pendency of the suit, the transferees from her were required to be brought on record under provisions of Order XXII Rule 10 CPC.

Further submissions were made that law in this regard is very clear, wherein, the Honâ??ble Supreme Court has laid down that the amendments

must be liberally permitted and, therefore, the order impugned deserves to be quashed and set aside.

Reliance was placed on judgments in Rajesh Kumar Agarwal & Ors. V. K.K. Modi & Ors.: (2006) 4 SCC 385, Thomson Press (India) Ltd. V.

Nanak Builders & Investors : (2013) 5 SCC 397 and Vineet Kumar v. Mangal Sain Wadhera : AIR 1985 SC 817. Learned counsel appearing for the

respondents vehemently opposed the submissions. It was submitted that the order impugned passed by the trial court does not call for any

interference. It was emphasized that the application is highly belated, earlier two applications were filed by two sets of plaintiffs, both the applications

were dismissed, which was challenged before the High Court, which upheld the dismissal on merits and, therefore, filing of the fresh application by

changing the form, cannot be sustained.

Further submissions were made that in the two separate applications filed by two sets of plaintiffs, mutually contradictory pleas have been taken

wherein, the plaintiffs No.4 to 8 have relied on the Will of Jawahar Lal and have claimed title independent of plaintiffs No.1 to 3 and have filed a

separate writ petition. It was submitted that the application was rightly rejected on account of delay, res judicata and the fact that the averments made in the application would change the nature of the suit.

Further submissions were made that nowhere in the application, the delay has been explained. The transfer deeds sought to be challenged are even prior to filing of the suit and the challenge laid is ex-facie barred by limitation and, therefore, the trial court was justified in rejecting the application, and the writ petitions also, therefore, deserve dismissal.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

When the earlier applications were filed on 15.9.2018, the same came to be rejected by the trial court by its order dated 4.7.2019. While rejecting the application the trial court inter alia observed as under:-

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21-12-2004 13-07-2007

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A perusal of the above determination would reveal that the trial court came to the conclusion that it was not indicated in the application as to which

paragraphs were sought to be amended, which sale deeds were sought to be cancelled and regarding the same, which paragraphs needs to be

amended. The reference to framing of issues and leading of the evidence were also noticed and on account of the delay, the applications were rejected.

In the writ petition filed by five plaintiffs, a Coordinate Bench of this Court while dismissing the writ petition inter alia observed as under:-

“I have heard learned counsel for the petitioners and perused the material available on record.

Indisputedly, the suit in question had been filed way back in the year 2001 and it has proceeded at a snail’s pace to reach at the stage of

plaintiffsâ?? evidence.

By way of the present amendment application, the petitioners have tried to get quashment of various sale-deeds, executed in the year 2004, 2007, 2008

etc. The petitioners have raised omnibus allegations and have not made specific prayer that in which part of the plaint they wanted amendment and

which facts inserted.

It is to be noticed that the petitioners had filed a composite application under Order VI Rule 17 and Order I Rule 10 of the Code, without separately

mentioning the names of the parties they wanted to implead. The petitionersâ?? application under consideration was bereft of merit and the same has

rightly been rejected by the Trial Court.

That apart, if the amendment, as prayed by the petitionersâ?? is allowed, it would require impleadment of various parties, service of notice upon them

and production of various documents, which would expand the suit to an unmanageable extent and the suit, as framed originally, would lose its basic

character and frame.

This Court does not find any error of jurisdiction or infirmity in the impugned order dated 04.07.2019 passed by the Trial Court, for which, the writ

petition is dismissed.

The Stay Application No.10687/2019 also stands dismissed.â??

(emphasis supplied)

A perusal of the above order would reveal that the court noticed the fact that the suit having been filed in the year 2001, that the sale deeds of the

year 2004, 2007 & 2008 were sought to be cancelled based on omnibus allegations and that the impleadment of various parties and production of

documents would expand the suit to an unmanageable extent and the suit as framed would lose its basic character and frame and based on the above

observations rejected the writ petition.

The subsequent applications filed with the identical facts only the form was changed by indicating the amendment sought in various paragraphs and

challenging sale deeds dated 27.6.2007, 16.5.2008, 13.1.2006, 7.4.2006, 4.6.2010 and 6.5.2013. In several paragraphs sought to be introduced the dates

of the sale deeds have not been indicated. A wholly cursory and vague, one line averment has been made that the transfers have taken place, which

came to the notice of the plaintiffs now. As to which event led to the petitioners coming to know of the transfers has not been indicated anywhere.

The averments, which have been made in the application are also most obnoxious, the example whereof, reads as under:-

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Interestingly, in the application filed by plaintiff No.6 seeking amendment, a plea contrary to the interest of plaintiffs No.1 to 5 regarding a Will dated

28.12.1993 allegedly executed by Jawahar Lal in favour of the plaintiff No.6 were also sought to be introduced. However, during course of

submissions, learned counsel appearing for the plaintiff â?" Suresh Kumar submitted that plaintiff No.6 has for the time being abandoned his plea

based on the Will in the present suit.

The above aspects, clearly reflect that the application filed by the petitioners seeking similar amendments stood rejected by the trial court by its order

dated 4.7.2019 and a Coordinate Bench of this Court while rejecting the writ petition, upheld the rejection of applications by indicating additional

reasons i.e. the ground of delay in seeking to challenge the sale deeds of the year 2004, 2007 and 2008 and that the amendment, if permitted, would

change the character and frame of the suit.

The said dismissal of application by the trial court and upheld by this Court on merits, would operate as res judicata as it has been laid down by

Honâ??ble Supreme Court in Arjun Singh v. Mohinder Kumar : AIR 1964 SC 993 that the res judicata applies in different stages of the same

proceeding.

Besides the above, in view of the fact that petitioners have not indicated any reason, whatsoever, for seeking amendment for challenging the transfer

deeds, which were executed way back in the year 2006, 2007, 2008, 2010 and 2013, the lack of due diligence is writ large on record and, therefore,

the rejection of the application by the trial court does not call for any

interference under Article 227 of the Constitution of India.

Further, insofar as, the plaintiff No.6 is concerned, the rejection of earlier application was not questioned by him and he has again filed the application

by taking a plea, which is contrary to the interest of the plaintiffs No.1 to 5, the said action, wherein, the two sets of plaintiffs were seeking to take

stand contrary to each other, itself is sufficient to reject the application seeking amendment in the plaint.

So far as the reliance placed on judgment in Rajesh Kumar Agarwal (supra) is concerned, the principles laid down have been to be applied in the

context and in view of what has been discussed hereinbefore, same would have no application to the present situation.

The plea raised based on provisions of Order XXII Rule 10 CPC by relying on the judgment in the case of Thomson Press (India) (supra) also has no

basis, inasmuch as, the defendant No.1 Smt. Phoolwanti expired in the year 2015 and all the alleged transfers took place during her life time and,

therefore, the application under Order XXII Rule 10 CPC, which could have been filed at the relevant time i.e. at the time of respective transfers, by

relying on event of death of Smt. Phoolwanti Devi, which aspect has no relevance to an application under the said provision, cannot be countenanced.

Further the trial court has already observed that the principles of lis pendens would apply and, therefore, attempt made on part of petitioners seeking

amendment in the plaint so as to put back the clock before the year 2004, when the issues were framed i.e. 15 years, cannot be permitted.

Consequently, the writ petitions filed by the petitioners have no substance. The same are, therefore, rejected.

The trial court is directed to proceed with the suit with utmost expedition.