

(2002) 04 DEL CK 0113
In the Delhi High Court
Case No : FAO (OS) 360 of 2000

Tara V. Ganju and Another

APPELLANT

Vs

Basant and Co. and Others

RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

Citation : (2002) 5 AD 839 : (2002) 64 DRJ 792 : (2002) 4 RCR(Civil) 3

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : A.S. Chandhiok, Dharmesh, Geetika and Satinder, for the Appellant;
S. Vaidialingam and Ashish Nischal, for Rajinder Nischal, for the Respondent

Final Decision : Allowed

Judgement

S. Mukerjee, J.—A dispute regarding amendment of pleadings has consumed about five years time, and it is in this significant context that the matter in issue in this appeal needs to be examined in the light of the judgments of the Supreme Court and various High Courts.

2. It is well settled that the description to allow amendment of pleadings in a case which is still at the initial stages (inasmuch as even the arguments on the confirmation or otherwise of the injunction, have not yet been heard), is to be quite liberally exercised, except for those amendments which go to set up a totally new or different case, or which amount to an attempt to resile from admissions already made or amount to an abuse of the process of the Court.

3. The Single Judge, vide impugned judgment dated 08.09.2000, has disallowed a large number of amendments as proposed by the appellant/plaintiff. During the hearing of this appeal, the counsel for the appellant/plaintiff submitted a list of proposed amendments in respect of which alone the appellant is now pressing for relief at the present appellate stage, thereby indicating that the other amendments, which though prayed for in the original amendment application, and though dealt with by the learned Single Judge, yet need not detain us while

hearing and disposing of the present appeal.

4. We have before us on record in tabulated form, in the shape of a chart agreed to by both the parties, containing all the proposed amendments, including therein specific reference to the paragraph of the amendment application, the paragraph of the plaint in which the amendment is proposed to be incorporated, the reason for applying for each amendment and the actual amendment proposed. These are contained at pages 38-51 of the paper book. The proposed amendments have also been given Serial Nos. in the chart, which Serial Nos. have been conveniently adopted by both the parties for purposes of convenience of reference during the arguments.

5. We are also proposing to decide the present appeal on the basis of the said Serial Nos. of each of the proposed amendments, confining ourselves only to the proposed amendments as set out at Sl. Nos. 6 to 9 and 13 to 16 in terms of the written submissions preferred by the counsel for the appellant, dated 13.03.2002 which are at pages 114 to 150 of the paper book, since he has restricted the relief in the present appeal only to those eight out of the totality of all those proposed amendments which had been disallowed by the Single Judge.

6. Certain facts Constituting the background of the litigation between the parties, to the extent required for dealing with the matter in the context of the prayer for amendment, and the impugned judgment of Single Judge declining the same, are conveniently extracted hereinabove from the text of the judgment and the pleadings of the parties.

7. The plaintiff is the daughter of Shri Ashish Ganju defendant No. 3, who in turn is the son of Pt.S.N. Ganju and grandson of Shri Jagan Nath Ganju. Although defendant No. 3, original defendants No. 4 & 5 were also grandsons of Pt. Jagan Nath Ganju and sons of Pt. S.N. Ganju, however by an application only original defendant No. 2 Sh. Alok Ganju, got himself transposed as plaintiff No. 2 Along with Ms. Tara V. Ganju (plaintiff No. 1).

8. It is the contention of the appellants/plaintiffs, that defendant No. 1 is the sole proprietorship firm of defendant No. 2, Sh. Basant Mishra, who allegedly vide an illegal sale deed dated 27.03.71 executed by the ceased father of the plaintiff No. 2 viz. Pt. S.N. Ganju, under purported authority of a defunct power of attorney in favor of his son claims himself to be the owner of the suit property.

9. The sale deed is a registered sale deed and the suit arises as a result of various pleas of the appellants/plaintiff, seeking to avoid the effect and consequences of the said sale deed.

10. The appellant/plaintiffs further claimed that they and their family members, are the co-owners of the property and are also in possession of part of the same which property late Pt.S.N. Ganju had acquired by a registered sale deed dated 9.8.45. plaintiffs claim that the consideration for the purpose of the said property had been allegedly paid by the plaintiff's great grand father (Pt. J.N. Ganju), as

per the averment made by the appellant.

11. It is also the contention of the appellant's/plaintiff's that Pt.S.N. Ganju was to hold the property as trustee, for and on behalf of and/or for the benefit of his lineal descendants (HUF). It is averred that Late Pt.J.N. Ganju father of late Pt.S.N. Ganju, had also at around the same time, purchased the adjoining half acre in the name of his other son, Pt.R.N. Ganju also for the benefit of his lineal descendants.

12. The appellants/plaintiffs contend that Pt.S.N. Ganju stood only reposed with the trust of maintaining and looking after the suit property as a trustee for the benefit and continuous use of lineal descendants.

13. Further it is averred that as a result of non-payment of regularisation charges in relation to misuse of the property, the Govt. of India reportedly issued notice of re-entry, which according to the appellants had the effect of vesting the property in the Government for nine long years right from June 1963 and up to July 1972, when the regularisation charges were paid and other formalities completed for securing revocation of the re-entry proceedings.

14. On the basis of the said factum of the re-entry proceedings having remained in operation from 7.6.63 up to July, 1972, according to the appellants/plaintiffs, Pt.S.N. Ganju did not have any surviving right, title or interest in the property which he could have alienated or assigned in favor of the respondent during intervening period vide the sale deed dated 27.3.1971.

15. The transaction of sale in the present case had been carried out through one Shri C.P. Mishra allegedly in the form an agreement to sell, initially dated 31.7.1969, which was subsequently superseded by another agreement to sell dated 12.6.70, both of which documents were executed under the purported power of attorney dated 31.7.69 in favor of said Shri C.P. Mishra. The Income Tax Clearance Certificate dated 6.7.71 had also been applied for, and had been granted in relation to the said transaction.

16. The case of the appellant is that Pt.S.N. Ganju was an alcoholic who allegedly remained under intoxication throughout the day, and his physical and mental health was such that he could not look after his assets and as a result the situation was manipulated by his acquaintances Shri C.P. Mishra and the son Basant Mishra who wasted away Pt. S.N. Ganju's properties and funds. It is also averred that under the said circumstances of control, undue influence and pressure of these persons, the sale transaction had been carried out in relation to a property which the appellant claims to be joint family property which could not be alienated.

17. We do not propose to go into any greater detail in the narration of facts, because we are dealing only with grievance against the disallowance of certain amendments proposed in the plaint, and as such we close the narration of facts here, noting however that on the side of the respondent/purchaser, a strong

contention has been set up to the effect that a sale of property which stood undisturbed for a period of almost 24 years, has been sought to be re-opened at the instance of initially plaintiff No. 1 (Mrs. Tara V. Ganju), who ex facie had no right, title or interest to do so being only the grand-daughter through the son of Pt. S.N. Ganju; and that subsequently the transposition of another son viz Shri Alok Ganju as plaintiff No. 2 does not sequentially change the legal position of the appellants having no good or justifiable case to reopen such a transaction and that too after inordinate delay and lapse of period of almost 24 years.

18. A reference may be made to the judgment of the Apex Court in the case of Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, wherein the principles governing the allowing of amendment under Order 6 Rule 17 of the CPC (hereinafter referred to as the Code) has been dealt with and explained in detail. In that case, an amendment of the plaint had been allowed at the stage of appeal subject to certain conditions. This order of the High Court was challenged before the Supreme Court. The main point which was argued in that case (as in the present case), was that the amendment could not be allowed at a belated stage. Further, it was contended that in the facts of that case, the period of limitation for filing a suit under Order 22 Rule 103 CPC, had already expired before the filing of the application for amendment.

19. The Supreme Court held that though it is no doubt true that the Courts would, as a rule, decline to allow amendments if a fresh suit on the amended claim would be barred by limitation, but that is only one of the factors to be taken into account in the exercise of discretion as to whether amendment should be ordered. This aspect does not inherently affect the power of the Court to order the amendment, in case the same be required in the interest of justice.

20. As regards the exercise of discretion in allowing the amendment, the Supreme Court referred to the Judgment of the Privy Council reported as AIR 1921 50 (Privy Council) where at the stage of second appeal, the Court allowed amendments to be made since there was no ground for suspecting with the plaintiffs had not acted in good faith, and also since the proposed amendment did not have the effect of altering the nature of the relief sought.

21. In the case of Pirgonda Hongonda Patil (supra) also, the Privy Council held that the proposed amendment did not alter the nature of the relief sought observing that a discretionary power of allowing amendment, cannot be constrained in a strait-jacket of any inflexible formula. The Apex Court held that if the quality and quantity of relief remained the same, then the same is to be allowed without going into the question whether the relief would be ultimately granted or not on the further consideration of the matter after the amendment is allowed.

22. Reliance was placed by the Apex Court with approval on the principles laid down by Batchelor J, in the case of Kisandas Rupchand v. Rachappa Vithoba, relevant portion whereof is extracted below;-

"All amendment ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since he institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defense to the claim. The ultimate test Therefore still remains the same: can the amendment be allowed without injustices to the other side, or can it not?

23. Ultimately, the test adopted has always been that the proposed amendment should not introduce a new case, and that the defendant should not have to meet a new claim set up for the first time after the expiry of limitation.

24. In the facts and circumstances of the present case, in our considered view, the plaintiffs/appellants have only proposed to further elaborate and elucidate the stand which had been already taken in the unamended plaint to the effect that the sale of the property was invalid. In our view, once the plaintiffs have pleaded the absence of lawful authority on the part of the transferor and also alleged the circumstances such as notice of re-entry etc., as otherwise also disabling the late Pt. S.N. Ganju from eliminating the said property, it was Therefore available in law for the said plaintiffs to not only elaborate and elucidate the same defense by giving further challenges and averments, but it was even permissible for the appellant/plaintiff to have adopted an additional/parallel challenge if so available in respect of the same relief. In fact, in our view the ratio of the various leading cases on the point of amendment of pleadings under Order 6 Rule 17 of the Code is well settled and in relation to the same final relief, it would be open to a party to adopt an additional and/or parallel approach also, so long as the proposed amendment and the earlier stand taken, are no self-destructive of each other.

25. As regards the other points laid down in the Judgment, viz that the amendment should not amount to a fresh claim in respect of a cause of action which, since the institution of the suit, has become barred, the discretion would still continue to vest in the Court to allow or disallow the amendment, as also in those case where the opposite party would suffer an injury pursuant to the amendment, which cannot be compensated in costs. The ultimate test in the exercise of discretion being whether the amendment can be allowed without injustice to the other side, or would it necessarily entail such injustice as would warrant the disallowance.

26. Applying the above principles to the facts of the present case, out findings in relation to various proposed amendments is as under :-

Proposed amendment at Sl. No. 6 to be added in sub para 3 of para 3 of the plaint.

"Once a property demised under a perpetual lease-deed is reentered by the title paramount the title thereof vests in the title paramount. The lessee in such circumstances stands divested of the right to deal with the said property in any manner anywise and in particular loses the right to alienate/ sell/ transfer the property to a third person. Any transfer/ sale of the property during the period of reentry is void ab-initio. Since such transfer/ alienation/ sale is void ab-initio in the eyes of law the same cannot be regularized/ compounded subsequently. Therefore the mutation based on the purported sale during the reentry period is itself void. The defendant No. 5 & 6 for extraneous considerations connived with the defendant No. 1 in mutating the name of defendant No. 1."

Proposed amendment at Sl. No. 8 to be added as sub para 1 of para 13 of the plaint.

8 "That the suit property as stated above stood vested in the "President of India" and/ or the title paramount w.e.f. from 07/06/63 free from all encumbrances, as such Pt.S.N. Ganju had no right title or interest which he could agree to alienate or assign. Once a property demised under a perpetual lease-deed is reentered by the title paramount the title thereof vests in the title paramount. The lessee in such circumstances stands divested of the right to deal with the said property in any manner anywise and in particular loses the right to alienate/ sell/ transfer the property to a third person. Any transfer/ sale of the property during the period of reentry is void and illegal. Since such transfer/ alienation/ sale is void ab- initio in the eyes of law the same cannot be regularized/ compounded subsequently."

27. We find that the proposed amendments at Sl. Nos. 6 and 8, are merely an emphatic re-statement of the averments of the plaintiff elsewhere regarding the re-entry proceedings, and the effect thereof on the sale transaction which had taken place during the re-entry period, including a challenge to the mutation on that account. Such an amendment would be entirely permissible as it neither sets up a new case nor it causes any injustice to the defendants which could not be compensated by award of costs.

Proposed Amendment No. 7 to be added at the end of existing para 8 of the plaint.

That para 8 of the plaint may be allowed to be amended by adding the following at the end of the existing para:

"That Rameshwar Nath Ganju who was undergoing severe cash crunch and was in dire need of money sold his half acre plot at a paltry sum of Rupees 1,50,000/- approx. on or about year 1971 which was contrary to the market rate of the property at that point of time."

28. Similarly, in relation to proposed amendment No. 7 the averments sought to

be incorporated are regarding the alleged compelling financial constraints of family member one Sh. R.N. Ganju, who sold the adjacent plot for Rs. 1,50,000 which plaintiff claims was a paltry amount, and Therefore could not be cited as a comparable instance of justifying the consideration amount in relation to this suit property.

Proposed amendment No. 9 to be added after the last line of the existing para No. 15.

"The said power of attorney was unregistered. That defendant No. 2 and his father Shri Chandi Prasad Misra on whom Pt. S.N. Ganju had virtually become dependent to further his alcoholism, under threat, coercion, intimidation got several blank papers signed from him, application for income tax clearance certificate etc. It was only under the aforesaid circumstances that the said unregistered power of attorney came into existence, otherwise, there was no occasion for grant power of attorney in favor of Shri Chandi Prasad Misra, as Pt. S.N. Ganju was based and was carrying on his business at Delhi.

29. As regards the proposed amendment at Sl. No. 9 is concerned, that seeks to incorporate an averment of the plaintiffs/ appellants to the effect that the power of attorney through which the sale transaction was carried out, was itself invalid on account of certain circumstances indicated in the amendment, and further that the document in question was an un-registered power of attorney in favor of father and son involved in the purchase. Therefore, this proposed amendment also is merely another approach to challenge the validity of the sale transaction, this time on the ground of invalidity of the holder of alleged power of attorney who happened to be closely related to the purchaser as father-son. This would also be a permissible amendment.

Proposed amendment No. 13 to be added as sub-para to para 22 of the plaint.

"That the defendant No. 5 & 6 in mutating the name of defendant No. 1 and 2 as owner of the suit property, for extraneous considerations, connived with them and father of defendant No. 2. The mutation was carried out in favor of defendant No. 1 on an application made by his father Shri Chandi Prasad Misra, purported to be acting under the unregistered power of attorney granted by Late Pt. S.N. Ganju, whereas vide the said unregistered power of attorney no powers were conferred on Shri Chandi Prasad Misra for getting the suit property mutated."

30. The proposed amendment at Sl. No. 13, is another manner of expressing certain averments regarding challenge to mutation in favor of defendants 1 and 2 and regarding the acts and deeds done/ performed by Sh. Chandi Prasad Mishra under the un-registered power of attorney. For the similar reasons as indicated above in relation to the amendments proposed at Sl. No. 6 and 9, these amendments also deserve to be allowed.

Proposed amendment No. 14 to be added after sub para f of para 23 of the plaint.

"Once a property demised under a perpetual lease-deed is reentered by the title paramount the title thereof vests in the title paramount. The lessee in such circumstances stands divested of the right to deal with the said property in any manner anyway and in particular loses the right to alienate/sell/transfer the property to a third person. Any transfer/sale of the property during the period of reentry is void and illegal. Since such transfer/alienation/sale is void ab-initio in the eyes of law the same cannot be regularized/compounded subsequently. Therefore the purported regularisation of sale and/or mutation based on the purported sale during the reentry period is itself void and illegal. The defendant No. 5 and 6 for extraneous considerations connived with the defendant No. 1 in mutating the name of defendant No. 1.

31. The proposed amendment at Sl. No. 14, is liable to be allowed for the reasons already explained in relation to Sl. Nos. 6 and 8 of the proposed amendments detailed above.

Proposed amendment No. 15 to be added as a sub para to para 26 of the plaint.

"That the defendant No. 1 and 2 from time to time intimidated and threatened forcible, illegal dispossession of the tenants of the family of the plaintiffs. With the design to illegally grab the portions of the property in the possession of the tenants claiming through the family of the plaintiffs the defendant No. 1 & 2 used pressure tactics by resorting to filing of various false and frivolous litigation against the said tenants and the family of the plaintiffs."

32. The proposed amendment at Sl. No. 15 relates to the alleged conduct of defendants 1 and 2 in relation to alleged dispossession of the tenants of the family of the plaintiffs allegedly with a view to illegally grab the property in the possession of the said tenants, and about the adoption of certain alleged pressure tactics by defendants 1 and 2 in relation to false and frivolous litigation. This amendment also does not set up a new case, nor does it entail injustice which cannot be compensated in terms of cost.

Proposed amendment No. 16 be added as additional para 27A after the existing para 27 of the plaint.

"27A. That at the time of the above stated transactions the plaintiff was a minor. That the plaintiff being the youngest son of Pt. S.N. Ganju was kept in dark by the other family members of the acts and deeds of his father. As such the plaintiff No. 2 who had always seen elders of the family dealing with the suit property and the tenants of the family in possession thereof, throughout was under the belief that the suit property was completely owned by the family though occupied by the tenants of the HUF of Pt. S.N. Ganju. It was only on or around the month of June July 1995 the plaintiff No. 2 came to know of the fact that the defendant No. 1 and 2 were in possession of the property and were carrying on illegal demolition and additions/alterations in the property. The plaintiff No. 2 learnt the same through plaintiff No. 1. That after coming to know the same through plaintiff No. 1 the plaintiff No. 2 probed the elders of the

family, including defendant No. 3, and made related inquiry, with regard to the status of the suit property. That on such probing and inquiries made the plaintiff No. 2 was made aware of the above stated facts and gained knowledge thereof."

33. Lastly, the above quoted proposed amendment No. 16 seeks incorporation of the averment that the plaintiff No. 2 was a minor at the relevant time, and had been kept in the dark by the other family members and further that he (plaintiff No. 2) had been holding the belief that the property was owned by the family and that only occupancy was with the tenants of the HUF of late Pandit S.N. Ganju. An averment has also been made to the effect that plaintiff No. 2 came to know only in the month of June/July 1995, that defendant No. 1 and 2 were claiming ownership rights in respect of the said property.

34. The respondent seriously objected to this proposed amendment being allowed, on the ground that the amendment is nothing else but a strategy to overcome the bar of limitation by incorporating this relatively recent date of knowledge. Attractive though this objection may appear on the first view, however taking into account the fact that plaintiff No. 2 was a minor at earlier points of time and he was now making a categorical averment upon getting himself transposed as plaintiff No. 2, that he came to know/acquire the knowledge about the rights of defendants 1 and 2 only in June/July 1995, as such the amendment has to be allowed since we are not concerned at this stage with the merits of the contention or the correctness of the averment as contained in the proposed amendment. It does not set up a new case, and also does not cause any injustice which cannot be compensated in terms of cost, and as such the amendment has to be allowed. It may well be that after the amendment is allowed and the pleadings and evidence come on record, thereafter at the end of the trial, the defendants 1 and 2 may be able to establish that the contention is of plaintiff No. 1 is a false or concocted or meritless contention or not borne out by evidence adduced by him. However that cannot be ground to decline amendment in the facts and circumstances of the present case.

35. Accordingly we allow the appeal and set aside the impugned order of the learned Single Judge and thereby allow plaintiff/appellants application (IA 3822/96) to the extent that the amendments at Sl. No. 6 to 9 and 13 to 16 shall stand allowed subject to the appellant paying a cost in the sum of Rs. 5000/= to each of the contesting defendants. Amendment plaint incorporating these amendments Along with these amendments which had been permitted by learned Single Judge, shall be filed within a period of four weeks from today before the learned Single Judge. Costs will also be paid to the Defendants within four weeks.

36. The parties will bear their respective costs, as regards the present appeal. The parties will appear before the learned Single Judge on 28.5.2002.