Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4568 OF 2018
(Arising out of SLP(Civil) Nos.7710 of 2018)

Gurbakhsh Singh and others ……Appellants

VERSUS

Buta Singh and another ..…. Respondents

JUDGMENT

Uday Umesh Lalit, J.

Leave granted

2. Civil Suit No.195 of 1968 filed by respondent No.1 for declaration on the basis of reversionary rights was decreed ex-parte against the predecessor-in-interest of the present appellants. After having come to know about such ex parte decree dated 30.06.1969, present suit was filed by the appellants for setting aside said decree.

3. The appellants pleaded in the suit that the file in respect of Civil Suit No.195 of 1968 was not traceable in the record room. Issues were framed and thereafter two official witnesses were examined, at which stage the appellants preferred an application seeking amendment of the plaint. The amendment sought by the appellant was as under:

> "3-A. That the perusal of the copy of the order/judgment dated 30.06.1969 and decree shows that the defendant No.1 filed that suit in the year 1968 deliberately without giving all the particulars of the land at that point of time in the plaint in spite of the fact that consolidation of holding did take place in the year 1961-1962 and gave the old numbers before the consolidation with ulterior motive. Since old numbers were not in existence at the time of filing of the suit, an ex parte decree has been procured by suspension of the material facts.
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> a) Land measuring 48 kanals 7 marlas entered at rect. No.39, Killa No.19/2, 12, 19/1, 18/2, 10, 23, rect. No.38, killa No.5, 6/1, rect. No.60, killa No.2/1min.
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> b) Land measuring 36 kanals 16 marlas entered at rect. No.38, kill No.16/2, 25/1, 14/2, 6/3, 24, 15/1, rect. No. killas No.14, 15/1.
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> c) Land measuring 68 kanals entered at rect. No.213, killas No.16/2, 14, 15, 17/1, 16/2, rect. No.114, killa No.11, 12, 10, 9, rect. No.212, killa No.21, rect. No.92, killa No.5. It may also be mentioned here that the suit filed by Buta Singh, defendant No.1 alone as shown in the copy of the order/judgment and decree of civil suit No.195 of 1968 without impleading all the legal heirs of vendor Mehnga Singh and when the 2nd suit was filed after the death of Mehnga Singh which was pending before the court of Sh. Rajesh Garg, no detail of the vendees and their successors in interest has been given in the plaint. At the most if the decree is not set aside a fact disputed and denied then too may the defendant No.1 is only at the best can claim relief to the extent of 1/9th share of the total property and other

> defendant No.17 to 24 are not legally entitled to any relief in view of the ex parte decree passed in civil suit No.195 of 1968.
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> 3-B That the prayer clause also requires to be amended. So before the words "costs of the suit and after the words" during the pendency of the suit following prayer may also be inserted.

4. The aforesaid application came to be dismissed by the trial court observing that the appellants had failed to exercise due diligence and that the facts in question could have been raised before framing of the issues. The rejection of the application for amendment was challenged by way of Civil Revision No.5373 of 2014 in the High Court. It was submitted on behalf of the appellants that there was no change in the nature of the suit except that specific khasra numbers were sought to be specified by way of amendment. It was further submitted that the amendment would not prejudice the case of the defendants.

5. The High Court, however, dismissed said revision petition by its judgment and order dated 25.07.2017, which is presently under appeal. It was observed by the High Court:

> "No doubt, the amendment would not change the nature of the suit, however, all amendments which do not change the suit cannot be allowed particularly after the commencement of the trial. It has been found by the Court that necessary pleadings are already in existence in the original plaint."

The High Court was of the view that Proviso to Order 6 Rule 17 of the Code of Civil Procedure, as duly amended, laid down that once the trial had commenced, no amendment could be allowed unless the court were to come to the conclusion that the party could not have raised the matter before the commencement of the trial despite due diligence.

6. In the present case the record of Civil Suit No.195 of 1968 in which ex parte decree was passed on 30.06.1969 is not traceable. In the circumstances, there could possibly be some inability in obtaining correct particulars well in time on part of the appellants. At the time when the application for amendment was preferred, only two official witnesses were examined. The nature of amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground. The High Court itself was conscious that the amendment would not change the nature of the suit. In the given circumstances, in our view, the amendment ought to have been allowed. In any case it could not have caused any prejudice to the defendants.

7. While allowing amendment of plaint, after amendment of 2002, this Court in circumstances similar to the present case, in ***Abdul Rehman and Anr***. vs. ***Mohd. Ruldu and Ors.***[1], had observed:

> **"11.** The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in ***J. Samuel* & Others** v. ***Gattu Mahesh and Others***[2] and ***Rameshkumar Agarwal*** v. ***Rajmala Exports (P) Ltd and Others.***[3] Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment."

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[1] (2012) 11 SCC 341
[2] (2012) 2 SCC 300
[3] (2012) 5 SCC 337

8. We, therefore, allow this appeal and accept the application for amendment preferred by the appellants. The plaint shall stand amended in terms of the proposed amendment. The trial court is directed to proceed with the matter accordingly. There will be no order as costs.

……J.
(Arun Mishra)

……..……J.
(Uday Umesh Lalit)

New Delhi,
April 27, 2018