Supreme Court Of India

Civil Appeal No. 4983 Of 2004 & 4984 Of 2004

Judgment Date:

05-08-2004

Pankaja

Vs

Yellappa (D) By Lrs. .

Bench :

{ HON'BLE MR. JUSTICE N. SANTOSH HEGDEHON'BLE MR. JUSTICE S.B. SINHA }

Citation :

2004 2 Bom CR 273 ; (2004) 6 SCC 415 ; AIR 2004 SC 4102 ; 2004 (5) ALLMR (SC) 1022 ; (2004) 2 CGLJ 213 ; (2004) 4 CTC 231 ; (2004) 3 RCR (CIVIL) 723 ; (2004) RLW 4 (SC) 509 ; (2005) 1 ARC 638 ; (2004) 97 RD 451 ; JT 2004 (6) SC 259 ; (2004) MPLJ 218 (SC) ; 2004 (6) SCALE 459 ;

Judgment

Santosh Hegde, J.

Heard learned counsel for the parties.

Leave granted.

1. The appellants herein filed a suit before the Principal Civil Judge, Shimoga, originally seeking the following reliefs:-

a) To grant a judgment and decree of permanent Injunction restraining the Defendants 1 to 10 their men, and agents from interfering with A A1 L O N C D portion of the suit schedule property.

b) For possession of the property identified as A1 B M N O L portion and also the N N1 O O 1 at annexure-A to the plaint of the suit schedule property.

c) Such her relief/reliefs that this Hon'ble Court deems fit to grant under the circumstances of the case as also the cost of this suit.

2. It is their case during the pendency of the said suit the respondent in violation of the court order further encroached into suit property to an extent of 15' x 15'. Therefore, the appellants sought for an amendment of the plaint seeking for possession of the said encroached area also. This application was also allowed by the Trial Court.

3. In the written statement filed by the respondents, a contention was taken that a suit for injunction and possession without seeking a declaration of title was not maintainable. Written statement was filed on 17th September, 1994. On 27th of July, 2000 realizing that a prayer for declaration on the facts of the case was essential the appellants filed an application for amendment of the plaint under Order 6 Rule 17, CPC by adding the following prayers:-

"[a] To declare that the Plaintiffs are the owners A1.B.M.N.N1.O1.O.L of the suit schedule property."

4. The Principal Civil Judge, Shimoga, by his judgment and order dated 22nd of September, 2000 rejected the application of the appellants on the ground that the application is filed at a belated stage.

5. Being aggrieved by the said order the appellants preferred a Revision Petition before the High Court of Karnataka at Bangalore. The said Revision Petition came to be dismissed by the High Court also on the ground that the application for amendment was filed at a belated stage. The court also held that the amendment introduced a different relief than what was originally asked for.

6. The appellants thinking that there was an error apparent on the judgment of the High Court filed a Review Petition which came to be dismissed by the High Court.

7. Therefore, the appellants are now before us in this appeal challenging the said order of the High Court as also the order of the Principal Civil Judge, Shimoga, rejecting their application praying for amendment of the plaint.

8. Ms. Kiran Suri, learned counsel for the appellants contended that the Trial Court was in error in coming to the conclusion that a belated application for amendment of the plaint, per se can not be allowed, she also contended the High Court erred in coming to the conclusion that the proposed amendment if granted would take away the right accrued to the respondent by lapse of time. She submitted that this view of the High Court is opposed to a number of judgments of this Court where had taken the view that delay in filing an application for amendment by itself should not be a ground for rejection of such application unless a serious prejudice was caused to the opposite party. She further submitted on the facts of this case the necessary averments in regard to the title of the appellants over the suit property was already there in the original plaint and what was sought by the amendment was only a relief in furtherance to the said plea found in the plaint. She also submitted that assuming for argument sake that there was a delay which creates a right on the opposite side even then in an appropriate case, it was open to the Court to consider the prayer for amendment, bearing in mind the fact that the power of the Court to allow application for amendment is unfettered provided the facts of the case so required the Court to exercise its discretion in favour of allowing the amendment. In support of her case, she placed strong reliance on the following judgments of this Court:-

1. Ragu Thilak D. John vs. S. Rayappan & Ors., 2001(2) SCC 472;

2. Estralla Rubber vs. Dass Estate (P) Ltd. 2001 (8) SCC 97;

3. Sampath Kumar vs. Ayyakannu & Anr. 2002 (7) SCC 559.

9. Mr. Girish Ananthamurthy, learned counsel appearing for the respondents-defendants strongly supported the impugned orders of the two courts below. He submitted that though the suit in question was filed as far back as on 11-7-1994 and the original defendant had in his written statement filed on 17-9-1994 disputed the title of the appellants. Even then the appellants application for amendment of the suit incorporating the prayer for possession was filed only on 27-7-2000 nearly 6 years after the institution of the suit. He further contended that in view of Entry 58 of the Schedule to the Limitation Act, 1963 a suit for declaration could have been instituted only within 3 years when the right to sue accrued to the appellants and the said right having accrued as far back as in the year 1994, an amendment seeking a declaratory prayer after 6 years thereafter is clearly barred by the provision of the Limitation Act and the respondents having accrued statutory right the same could not have been defeated by allowing an amendment filed beyond the statutory period of limitation.

10. So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application.

11. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?

12. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

13. This Court in the case of L.J. Leach and Co. Ltd. & Anr. Vs. Messrs. Jardine, Skinner and Co. - A.I.R. 1957 S.C. 357 has held:-

“It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the

amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

14. This view of this Court has, since, been followed by a 3 Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd, Vs. T.N. Electricity Board & Ors. 2004 (3) SCC 392. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice.

15. Factually in this case, in regard to the stand of the defendant that the declaration sought by the appellants is barred by limitation there is dispute and it is not an admitted fact. While the learned counsel for the defendant-respondents pleaded that under Entry 58 of the Schedule of the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years, therefore, according to them the prayer for declaration of title is not barred by limitation, therefore, both the courts below have seriously erred in not considering this question before rejecting the prayer for amendment. In such a situation where there is a dispute as to the bar of limitation this Court in the case of Ragu Thilak D. John Vs. S. Rayappan & Ors. 2001 (2) SCC 472 (supra) has held:-

"The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed"

16. We think that the course adopted by this Court in Ragu Thilak D. John's case (supra) applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendments sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendments sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.

17. We have already noted, hereinabove, that there is an arguable question whether the limitation applicable for seeking the relief of declaration on facts of this case falls under Entry 58 of the Limitation Act or under Entries 64 of 65 of the Limitation Act which question has to be decided in the trial, therefore, in our view, following the judgment of this Court in the case of Ragu Thilak D. John (supra), we set aside the impugned orders of the courts below, allow the amendment prayed for, direct the Trial Court to frame necessary issue in this regard and decide the said issue in accordance with law bearing in mind the law laid down by this Court in the case of L.J. Leach and Co. Ltd. & Anr. (supra).

18. For reasons stated above these appeals succeed and same are allowed.