

CASE NO.:
Appeal (civil) 3250 of 2008

PETITIONER:
MANOJ KUMAR

RESPONDENT:
KISHAN LAL (D) THROUGH L.RS. AND ANR.

DATE OF JUDGMENT: 02/05/2008

BENCH:
S.B. SINHA & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R

[Arising out of SLP(C) No. 113/2007]

1. Leave granted.

2. This appeal is directed against the judgment and order dated 18.10.2006 passed by a Division Bench of the High Court of Judicature at Rajasthan at Jodhpur in Second Appeal (Writ) NO. 627/2006, whereby and whereunder the writ petition filed by the appellant against the order of the Trial Judge rejecting an application for amendment, was dismissed.

3. The appellant filed a suit 6.3.2000, for seeking a permanent and mandatory injunction against the respondents in respect of the plot of land situated at Amet in Rajasmand, restraining the respondents - defendants from raising any construction on the souther side of the said plot. This land is said to have been purchased by the appellant, which allegedly was left to be open for use and thoroughfare.

4. The suit was filed on 6.3.2000. The defendants filed the written statement on or about 17.5.2001. An application for amendment of the plaint was filed purported to be in terms of the Order 6 Rule 17 of the Code of Civil Procedure (CPC), in terms whereof three long paragraphs were sought to be added after paragraph 3. In the said application for amendment, the appellant sought to make out absolutely a different case that the parties herein entered into an agreement, pursuant whereeto the defendants agreed not to raise any construction towards the south side of the land in question. The said application for amendment was rejected by the learned Trial Judge by his order dated 10.10.2002.

5. A revision application filed by the appellant thereagainst was disposed of giving liberty to the appellant to file a review application. Thereafter, a review application was filed on 27.11.2002 which was rejected by an order dated 2.6.2006. A writ petition filed thereagainst has been dismissed.

6. Learned counsel appearing on behalf of the appellant would submit that the application for amendment was filed only with a view to supplement the original case filed by the plaintiff and no new case has been made out. Learned counsel would contend that it is now well settled that the Courts should be liberal while dealing with application for amendment of the plaint.

7. We have been taken through the judgment of the learned Trial Judge dated 10.10.2002. The learned Trial Judge has considered the question at some length. It was pointed out that the amendment sought for by the appellant intended to make out a case which was somewhat inconsistent with his earlier case. From a perusal of the order dated 13.11.2002 passed by the High Court of Judicature at Rajasthan, it appears that the correctness of the said order was not questioned and the revision petition was withdrawn stating that a review application was filed.

8. Once the said revision application was withdrawn, the order of the learned Trial Judge attained finality. It is difficult to comprehend as to how the order of the learned Trial Judge could have been the subject matter of a review. It was rightly

dismissed by the learned Trial Judge in terms of his order dated 2.6.2006.

9. The High Court, therefore, was, in our opinion, entirely correct in passing the impugned judgment. We have noticed hereinbefore that the contention of Mr. Shishodia, learned counsel appearing on behalf of the appellant, was in relation to the original order passed by the learned Trial Judge. As the said order has attained finality, the only question which arose for consideration of the High Court was as to whether the review has rightly been rejected or not. There cannot be any doubt whatsoever that no case was made out for review of the said order.

10. Keeping in view the facts and circumstances of this case, we direct the learned Trial Court to dispose of the matter as expeditiously as possible, preferably within a period of six months from the date of communication of this order. The parties shall render all cooperation to the Trial Court for early disposal of the suit.

11. The appeal is dismissed with the aforementioned direction.