

CASE NO.:
Appeal (civil) 1700 of 2007

PETITIONER:
Shiv Gopal Sah @ Shiv Gopal Sahu

RESPONDENT:
Sita Ram Saraugi & Ors

DATE OF JUDGMENT: 30/03/2007

BENCH:
Ashok Bhan & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Civil) No.1729 of 2006)

V.S. SIRPURKAR, J:

1. Leave granted.
2. Judgment of the High Court passed under Section 115 CPC confirming the order passed by the Additional Munsiff is in challenge in this appeal. The High Court has approved of the amendments which were permitted to be made by the trial court.
3. Learned counsel appearing on behalf of the petitioner herein assails both the judgments stating that the said amendment application was liable to be dismissed on the ground that it permitted the plaintiffs to include a time barred claim and secondly it was hopelessly belated and as such the plaintiffs lacked bona fides.
4. Some facts would be necessary. Original suit was filed in the year 1986 bearing registration number Eviction Suit No.11 of 1986 which was filed by Sita Ram Saraugi and some others impleading the present petitioner-defendant Shiv Gopal Sah @ Shiv Gopal Sahu. This was a suit for eviction on the ground of personal necessities of the plaintiffs. Original defendant Ram Charitra Sahu appeared and raised a plea that he was not a tenant and further that he was in fact an owner having purchased the suit property along with the other part of the property from Banwari Sah and others by sale deed dated 4.10.1985 and as such he was the full owner of the entire house including the suit property. In view of these pleadings raised by the defendant, the suit was converted into a Title Suit by the order of the court dated 16.12.1988. By subsequent order dated 4.1.1991 the suit was renumbered as Title Suit No.17 of 1991 and the plaintiff was directed to pay advalorem court fees as also to effect the necessary amendments. The plaintiff failed to avail of this opportunity to amend the suit. Eventually, the original defendant died and the present petitioner-defendant has been impleaded for him. The original plaintiff, namely, Sita Ram Saraugi seems to have sold the suit property during the pendency of the suit in favour of Vijay Kumar Yadav and Manju Devi, respondent nos.3 and 4 herein in the year 1997, who were added as the co-plaintiffs by their application dated 22.5.2004.
5. On 11.12.2004 the plaintiffs moved an application under Order 6 Rule 17 CPC seeking amendments to the plaint. It was stated in that amendment application that the said amendments have become necessary on account of the plea raised by the defendant regarding his becoming an owner by the registered sale deed dated 4.10.1985. It was also suggested that the averments regarding the title of the plaintiffs, reliefs to be claimed relating to the title, description of the area of the land in the suit and the explanation of plaintiffs relating to the sale deeds in favour of the defendant had to be introduced by the amendments. It was also alleged that it was necessary to challenge the sale deed dated 4.10.1985 in favour of the defendants and get it declared bogus and not binding against the plaintiffs and that the defendant no.1 had not acquired any right, title or interest over the suit property by that sale deed and to

further assert that plaintiff Sita Ram Saraugi had a valid title and possession on the suit land which he transferred validly in favour of Vijay Kumar Yadav and Manju Devi. The plaintiffs also prayed, vide the said amendment application, that the original plaintiff Sita Ram Saraugi was liable to be transposed as a party-defendant.

6. This amendment application was, though strongly opposed by the defendants on various grounds, allowed and as stated earlier, the challenge by the defendants by way of a Civil Revision thereto in the High Court also did not succeed necessitating the present appeal.

7. Shri Kulkarni, the learned counsel appearing for the petitioner-original defendant pointed out that the High Court was in error in confirming the order passed by the trial court allowing the amendment. His main thrust was that the amendment application was trying to introduce a time barred claim regarding the declaration of the sale deed dated 4.10.1985 being a bogus and ineffective document. According to the learned counsel the fact of the said sale deed was brought to the notice of the plaintiffs way back in the year 1987 when the defendants had pleaded a title in his favour on the basis of that sale deed. Learned counsel further points out that even after the original eviction suit was converted into title suit in the year 1988 and was re-numbered in 1991, the civil court in its order dated 4.1.1991 had permitted the original plaintiffs, respondent no.1 and 2 to suitably amend the plaint. However, the original plaintiffs did not challenge the said sale deed dated 4.10.1985 which was in direct conflict with his title. Learned counsel further points out that again in the year 1987 when the plaintiff transferred the suit property in favour of Vijay Kumar Yadav and Manju Devi, respondents 3 and 4 herein as the watchful purchasers, the new so-called transferees were bound to join the plaintiffs which they did not do upto 2004 and it was only after they joined the suit as the co-plaintiffs that it dawned upon them for the first time to challenge the sale deed dated 4.10.1985 in favour of the petitioner-defendant. All this suggests that the challenge to the sale deed which had become known to the original plaintiff way back in 1987 and of which there was bound to be a notice to the newly added plaintiffs, hopelessly time barred. Learned counsel further submits that there are no bona fides in the plaintiffs at all as the plaintiffs have remained callously negligent towards their own rights. Learned counsel, therefore, states that the trial court as well as High Court erred in allowing the amendments.

8. As against this it was contended by the learned counsel appearing on behalf of the original plaintiffs-respondents 1 and 2 herein that it was always permissible for the court to allow the amendment at any stage and even if it is presumed that the challenge has become time barred, yet the court could permit the amendments. Learned counsel for the respondent tried to rely on some rulings of this Court stating that this Court had permitted the amendments even when a time barred challenge was sought to be introduced by the amendments.

9. It is to be seen as to whether the courts below were right in allowing the plaintiffs to introduce the amendments.

10. There can be no dispute that the defendant had opened his cards and asserted his title vis-à-vis the original plaintiffs right in the beginning in the year 1987 when he, for the first time, filed the written statement. It is then that the original eviction suit was converted into the title suit. This was the first opportunity to challenge the sale deed dated 4.10.1985. As if this was not sufficient, the trial court also permitted the plaintiffs to make the necessary amendments. We fail to understand the apathy on the part of the plaintiffs in the wake of all this happenings. As if this was not sufficient when the plaintiffs allegedly sold the property in favour of Vijay Kumar Yadav and Manju Devi in the year 1997 by two separate sale deeds, he could have given the notice of the cloud on his title to the purchasers or atleast the purchasers were bound to take notice of the cloud on the title of the original plaintiff. The purchasers, i.e., respondents 3 and 4 herein respectively remained complacent right till 2004. We do not know as to how original plaintiffs kept the suit alive for a long period of seven years. It is only in the year 2004 that the transferees sought to add themselves as the co-plaintiffs which should have been done immediately after they purchased the said suit property by two separate sale deeds in

the year 1997. It is, therefore, clear that the original plaintiff as also the subsequent purchasers remained complacent and negligent all through for a period of more than 15 years and woke up for the first time to challenge the sale deed dated 4.10.1985 by seeking a declaration that it is bogus and did not create any title in favour of the original defendant.

11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation, atleast regarding the delay since the delay was very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them to amend the plaint, more particularly when the claim has, apparently, become barred by time.

12. It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time. However, for that there had to be a valid basis made out in the application and first of all there had to be bona fides on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any stage of the suit, however, when by that amendment an apparently time barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his bona fides, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by lapse of time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application.

13. In Dondapati Narayana Reddy vs. Duggireddy Venkatanarayan Reddy & Ors. [(2001) 8 SCC 115] this court observed:

"The amendment should, generally, be allowed unless it is shown that permitting the amendment would be unjust and result in prejudice against the opposite side which cannot be compensated by costs or would deprive him of a right which has accrued to him with the lapse of time."

14. In T.N. Alloy Foundry Co. Ltd. vs. T.N. Electricity Board & Others [(2004) 3 SCC 392] a three Judge Bench of this Court relying on L.J. Leach & Co. Ltd. vs. Jardine Skinner and Co. [AIR 1957 SC 357] reiterated as under:

"The law as regards permitting amendments to the plaint is well settled. In L.J. Leach & Co. Ltd. v. Jardine Skinner and Co. it was held that the court 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."

The situation is no different in this appeal and as such a suit as described above would be clearly barred by limitation.

15. The defendant having set up a rival title on the basis of sale deed dated 4.10.1985 the plaintiff was bound to amend his pleadings if he wanted to challenge the said sale deed to be ineffective and incapable of creating a valid title in favour of the defendant. It completely beats us as to why the plaintiff remained complacently negligent right from 1987 in case of original plaintiff and after 1997 in case of co-plaintiffs. On the top of it when we see the amendment application, it is sadly silent regarding any explanation as to why all these steps were not taken after a long period right from 1987 till the amendment application is made on 11.12.2004. Having not challenged, the sale deed dated 4.10.1985, the plaintiff could not lead evidence regarding the circumstances under which that sale deed came into existence which facts they would be entitled now if the amendments were to be allowed. That would be completely different from their preliminary task of proving a better title to the property.

15. Under the circumstances we would not permit the plaintiffs now at

this stage to introduce a time barred claim under the peculiar facts and circumstances of this case where we find a complacent negligence on the part of the plaintiffs apart from the towering delay of more than 15 years. We, therefore, allow this appeal and set aside the orders of the High Court as well as the trial court and dismiss the application for amendment dated 11.12.2004.

16. There will be no order as to costs.

JUDIS