PURAN RAM

v.

BHAGURAM AND ANR.

(Civil Appeal No. 1673 of 2008)

FEBRUARY 29, 2008

[TARUN CHATTERJEE & HARJIT SINGH BEDI, JJ.]

Specific Relief Act, 1963: s.26 – Rectification of instrument – Suit for specific performance of agreement for sale – Part of suit property wrongly described by mutual mistake in the agreement for sale and in the plaint – Prayer for amendment of plaint and agreement for sale to correct a part of description of suit property – Permissibility of – Held: Permissible by virtue of proviso to s.26 – The relief claimed in the suit would remain same and would not change the nature of suit from suit for specific performance to suit for declaration – Code of Civil Procedure, 1908 – Order 6 r.17.

Code of Civil Procedure, 1908: Order 6 r.17 – Amendment application – Held: Can be allowed by court in its discretion even where the relief sought to be added by amendment is barred by limitation.

The parties entered into agreement for sale of suit property. Appellant-purchaser paid a sum of Rs.50,000/- to the respondent-vendor. By virtue of this payment, respondent no.1 put the appellant in possession of the property and also agreed to execute the sale deed on receiving a further sum of Rs.1,50,000/- from the appellant within 30 days. Respondent No.1 received the balance consideration and executed an agreement to sell and power of Attorney in favour of appellant. However, he failed to execute the sale deed.

The appellant filed a suit for specific performance of contract for sale and for permanent injunction in respect

A of the suit property. In the plaint, appellant described the suit property as falling in Chak No. 3 SSM. When the description of a part of the suit property was found to be a mutual mistake, appellant filed an application under Order 6 Rule 17 CPC seeking the amendment of the plaint
B and for giving the description of the suit property as Chak No.3 SLM. The trial Court rejected the prayer for amendment of the plaint on the ground that plaint was filed on the basis of agreement to sell and since no prayer was made for amending the agreement, the application
C for amendment of the plaint could not be allowed.

The appellant filed another application for amendment of the plaint seeking amendment this time not only of the plaint but also of the agreement to sell. The First Appellate Court allowed the said application.
D Aggrieved respondent No.2, who was purchaser of suit property, from respondent no.1 filed a petition under Article 227 of the Constitution of India. High Court allowed the petition on the ground that relief sought for by the appellant by way of amendment of the plaint could not be
E allowed in view of the expiry of the period of limitation; and that if such amendment was allowed, the nature of the suit would change from a suit for specific performance of contract for sale to a suit for declaration which was not permissible. Hence the present appeal.

F Partly allowing the appeal, the Court

HELD: 1. In a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the
G agreement in terms of s.26 of the Specific Relief Act, 1963. A reading of the two conditions made under s.26 of the Act show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue
H may claim in his pleading that the instrument be rectified.

The main issue in the instant suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended. S.26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to s.26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including such claim. From a plain reading of the provisions under s.26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No. 3 SSM to Chak No. 3 SLM, later on converted to Chak No. 3 SWM could not be granted. It is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. The relief claimed in the suit remained the same i.e. a decree for specific performance of the contract for sale and by amendment, no declaration has been sought for in respect of the instrument. So far as the question of limitation is concerned, the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation. [Paras 11–13] [672-E; 673-A, B, C, D, E, F, G]

Raipur Manufacturing Co. Ltd v. Joolaganti Venkatasubba Rao Veerasamy & Co AIR (1921) Mad 664 – affirmed.

2. The High Court ought not to have interfered with the order of the trial court when the order of the trial court was passed on sound consideration of law and facts and when it cannot be said that the order of the trial court was either without jurisdiction or perverse or arbitrary.

A **[Para 14] [675-F, G]**

3. The court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. It is well settled that allowing and
B **rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds. [Para 15] [676-A, B, C, D]**

C *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* **AIR (1969) SC 1267;** *Pankaja & Anr. v. Yellappa (Dead) by LRs. & Ors.* **(2004) 6 SCC 415 – relied on.**

4. The question of limitation would not arise when
D **mis-description of the name of the original plaintiff or mis-description of the suit property arose in a particular case. Apart from that in the present case, although, the relief claimed before as well as after the amendment remained the same i.e. a decree for specific performance of the**
E **contract for sale, even then, in the facts and circumstances of the case, the High Court should not have interfered with the discretion used by the trial court in allowing the application for amendment of the plaint. [Para 15] [676-F, G; 677-A]**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1673 of 2008.

From the final Judgment and Order dated 16.05.2005 of the High Court of Judicature for Rajasthan at Jodhpur in SB
G Civil Writ Petition No. 1412 of 2005.

B.D. Sharma, N. Vyas, Dr. Aaray Wingaiah, Vidya Sagar and Bharathi for the Appellant.

Sushil Kumar Jain, Puneet Jain and H.D. Thanvi (for
H Pratibha Jain) for the Respondents.

The Judgment of the Court was delivered by A

TARUN CHATTERJEE, J. 1. Leave granted.

2. This appeal relates to rejection of an application for amendment of plaint in a suit for specific performance of the agreement for sale passed by the High Court of Rajasthan at B Jodhpur by which the High Court, in the exercise of its power under Article 227 of the Constitution, had reversed the order of the Second Additional District Judge, Bikaner allowing the application for amendment of the plaint.

3. On 18th of December, 1997, the plaintiff/appellant had C filed a suit for specific performance of a contract to sell relating to 25 bighas of irrigated agricultural land in Chak No. 3 SLM, being Square No. 112/63, Colonization Tehsil Pungal, District Bikaner, Rajasthan (hereinafter called as ¡§the suit property¡¨) and for permanent injunction. D

4. The case made out by the appellant in the plaint is to the following effect :-

5. The appellant had entered into an agreement for sale to purchase the suit property for a sum of Rs. 2,00,000/-. On 12th E of April, 1991, he paid a sum of Rs.50,000/- to the vendor Bhaguram. By virtue of the payment, Bhaguram, the respondent No.1, has put the appellant in possession of the suit property and has also agreed to receive a further sum of Rs.1,50,000/- from the appellant within a period of 30 days and thereafter F execute the sale deed in favour of the appellant. On 12th of April, 1991, Bhaguram received the balance consideration money of Rs.1,50,000/- from the appellant and executed an agreement to sell and a power of attorney in his favour. Since the respondent No.1 had failed to execute the sale deed after receiving the G balance consideration money of Rs.1,50,000/-, the appellant was constrained to file the suit for specific performance of contract for sale and for permanent injunction in respect of the suit property. It is to be noted that the appellant in his plaint has described the suit property as falling in Chak No.3 SSM, Tehsil H

A Pungal, District Bikaner.

6. When the description of a part of the suit property was found to be a mutual mistake, the appellant filed an application for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure on 20th of March, 1998 seeking to amend B the plaint and give the description of the suit property as Chak No.3 SLM instead of Chak No.3 SSM. Initially, the application for amendment of the plaint was filed seeking to correct a part of the description of the suit property only in the plaint. The application for amendment of the plaint was contested by the C respondent No.1. However, by an order dated 29th of August, 1998, the prayer for amendment of the plaint was rejected by the trial court on the ground that the plaint was filed on the basis of the agreement to sell dated 12th of April, 1991 and since no prayer was made for getting the agreement amended, the D application for amendment of the plaint could not be allowed. Feeling aggrieved, a revision petition was filed, but later on, the same was rejected as withdrawn with liberty to raise the question in appeal against the final judgment, if such occasion arose. Since the agreement entered into by the parties contained a E wrong description relating to the suit property, the appellant filed another application for amendment of the plaint seeking amendment this time not only of the plaint but also the agreement to sell dated 12th of April, 1991 so as to describe the suit property as Chak No.3 SLM, later on converted to Chak No. 3 SWM in F place of Chak No.3 SSM. In the said application for amendment, the appellant sought amendment of the agreement on the ground that under Section 26 of the Specific Relief Act, 1963, he was entitled to seek amendment in the plaint as well as in the agreement by which the nature of the suit, which is a suit for G specific performance of the contract for sale could not be said to have been changed. This application for amendment of the plaint was also contested by the respondent No.1 contending, inter alia, that if such amendment was allowed, the nature and character of the suit would be changed and also that the appellant cannot be permitted to amend the agreement in H

question in a suit for specific performance of contract for sale. By an order dated 25th of February, 2005, the Second Additional District Judge, Bikaner, allowed the application for amendment of the plaint. Feeling aggrieved by the aforesaid order of the Second Additional District Judge, Bikaner, the respondent No.2, who has purchased the suit property from the respondent No.1, filed a petition under Article 227 of the Constitution challenging the aforesaid order allowing the application for amendment of the plaint.

7. By an order dated 16th of May, 2005, which is now impugned in this appeal, the High Court allowed the petition and set aside the order of the trial court, inter alia, on the following grounds:-

[i] Relief sought for by the appellant by way of amendment of the plaint could not be allowed in view of the expiry of the period of limitation;

[ii] If such amendment was allowed, the nature of the suit would change from a suit for specific performance of contract for sale to a suit for declaration which was not permissible;

8. On the aforesaid findings, the High Court, as noted herein earlier, had rejected the application for amendment of the plaint by passing the impugned judgment. The said order is now under challenge before us by way of a special leave petition in respect of which leave has already been granted. It may be stated at this juncture that the trial court in its discretion had allowed the application for amendment of plaint. In that situation, it needs to be seen whether it was open to the High Court in the exercise of its power under Article 227 of the Constitution to reverse the said order and reject the application for amendment of plaint. We will come to this question later after we deal with the question whether the application for amendment of plaint in the facts and circumstances of the case and on the allegations made in the plaint could be rejected.

A 9. Heard the learned counsel for the parties and examined the impugned order and the order of the trial court as well as the application for amendment of the plaint and other materials on record. After hearing the learned counsel for the parties and considering the nature of amendment sought for, we are not in B agreement with the order passed by the High Court rejecting the application for amendment of the plaint. The learned counsel appearing on behalf of the appellant has contended that in view of the nature of amendment sought for in the plaint as well as in the agreement, the High Court was not justified in rejecting the C prayer for amendment of the plaint and the agreement. He further contended that in view of Section 26 of the Specific Relief Act, 1963, it was open to the appellant to apply for amendment of the agreement for sale. The learned counsel for the appellant also contended that since the prayer for amendment of the plaint D was only to correct a part of the description of the suit property in the agreement for sale as well as in the plaint, the court was not justified in rejecting the application for amendment of the plaint and the agreement. Further, by such amendment of the plaint, neither the nature and character of the suit would be changed nor the question of limitation could arise. According to E the learned counsel for the appellant, the suit would remain a suit for specific performance of the contract for sale and only a part of the description of the suit property would be changed, as noted herein earlier, by way of such amendment. The learned counsel appearing for the respondent, however, sought to argue F that the amendment of the agreement, even so far as a part of the description of the suit property is concerned, can not be allowed in a suit for specific performance of the contract for sale. According to him, Section 26 of the Specific Relief Act clearly expresses the intention that if the description of the suit G property needs to be corrected, it can only be corrected by instituting a suit for correction or rectification of the deed. He has also drawn our attention to sub-section (4) of Section 26 and submitted that no relief for rectification of an instrument should be granted to any party under section 26 of the Act unless H it has been specifically claimed. So far as the prayer for

amendment of the plaint is concerned, the learned counsel for the respondent contended that the prayer for amendment of the plaint would be barred by limitation as the agreement was entered into on 12th of April, 1991 and the amendment of the plaint was sought on 9th of May, 2003. Accordingly, neither the prayer for amendment of the agreement, nor the prayer for amendment of the plaint could be allowed even though the said amendment relates only to the change of a part of the description of the suit property.

10. Keeping the arguments advanced by the learned counsel for the parties in mind, let us now consider whether the prayer for amendment of the plaint and the agreement, in the facts and circumstances of the case, could be allowed or not. So far as the prayer for correcting or rectifying the agreement in respect of a part of the description of the suit property is concerned, it would be appropriate to look into the provisions made in Section 26 of the Specific Relief Act, 1963. Chapter 3 of the Specific Relief Act, 1963 specifically deals with rectification of instruments. Section 26 provides as to when an instrument may be rectified and reads as under: -

> *"26. When instrument may be rectified. –(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then-*
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> (a) either party or his representative in interest may institute a suit to have the instrument rectified; or
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> (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or
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> (c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.
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> *(2) If, in any suit in which a contract or other instrument*

A *is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done*
B *without prejudice to rights acquired by third persons in good faith and for value.*

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically
C enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed;

D *Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim."*

11. After closely examining the provisions made under
E Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument
F can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then-

G

(a) either party or his representative in interest may institute a suit to have the instrument rectified, or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that
H the instrument be rectified.

12. A reading of these two conditions made under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended. Section 26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including such claim. From a plain reading of the provisions under Section 26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No. 3 SSM to Chak No. 3 SLM, later on converted to Chak No. 3 SWM could not be granted. In our view, it is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. In our view, the suit shall remain a suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but also in the agreement itself. So far as the question of limitation is concerned, the agreement was entered into on 12th of April, 1991 and the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation. So far as the submission of the learned counsel for the respondent that the rectification of the agreement cannot be permitted is concerned, we are of the view that Section 26(4) of the Act only says that no

A relief for rectification of instrument shall be granted unless it is specifically claimed. However, proviso to Section 26, as noted herein earlier, makes it clear that when such relief has not been claimed specifically, the court shall at any stage of the proceeding allow such party to amend the pleading as may be B thought fit and proper to include such claim. Therefore, we are not in agreement with the learned counsel for the respondent that section 26 would stand in the way of allowing the application for amendment of the agreement. The views expressed by us find support in a decision of the Madras High Court in ***Raipur*** C ***Manufacturing Co., Ltd*** Vs. ***Joolaganti Venkatasubba RaoVeerasamy & Co*** [AIR 1921 Mad 664], wherein it was held that where in the course of a suit for damages for breach of contract, the plaintiff contends that there is a clerical error in the document embodying the contract, it is not always necessary that a separate suit should have been brought for rectification D of the document and it is open to the court in a proper case to allow the plaintiff to amend the plaint and ask for the necessary rectification. As noted herein earlier, the learned counsel for the respondent contended before us that the appellant could not get specific performance of the contract for sale unless he sued E for rectification of the agreement for sale. We are unable to accept this contention of the learned counsel for the respondent for the simple reason that in this case, by filing the application for amendment in the suit for specific performance of the contract for sale, the appellant had sought the rectification of the F agreement also. It is sufficient to observe that it was not necessary for the appellant to file a separate suit for that purpose as contended by the learned counsel for the respondent. It is open to the appellant to claim the relief of rectification of the instrument in the instant suit. The amendment, in our view, in the G agreement was a formal one and there was no reason why such amendment could not be allowed.

13. The other ground on which the High Court has refused to permit the appellant to amend the plaint is that if the amendment is allowed, the suit shall be converted into a suit for H

declaration. We are unable to accept this view of the High Court. In our view, the suit is a suit for specific performance of the contract for sale simplicitor and only a part of the description of the suit property in the agreement as well as in the plaint was sought to be corrected or amended by the appellant by filing the application for amendment of the plaint. If we are permitted to look into the description of the suit property from the original plaint as well as from the application for amendment, it would be clear that the description of the suit property has been kept intact excepting that instead of Chak No. 3 SSM, Chak No. 3 SLM, later on converted to Chak No. 3 SWM, has been sought to be replaced. Therefore, it is difficult to conceive that by such amendment, that is, instead of Chak No.3 SSM, if Chak No.3 SLM, later on converted to SWM is substituted, either the description of the suit property or the nature of the suit would change. This is only a change in a part of the description of the suit property, which was wrongly described by mutual mistake. Therefore, in our view, this change in a part of the description of the suit property in the plaint cannot convert the suit for specific performance of the contract to a suit for declaration. In any view of the matter, the relief claimed in the suit remained the same i.e. a decree for specific performance of the contract for sale and by amendment, no declaration has been sought for in respect of the instrument.

14. We may now take into consideration as to whether the High Court, in the exercise of its power under Article 227 of the Constitution, was justified in rejecting the application for amendment of the plaint, which, in the discretion of the trial court, was allowed. We are of the view that the High Court ought not to have interfered with the order of the trial court when the order of the trial court was passed on sound consideration of law and facts and when it cannot be said that the order of the trial court was either without jurisdiction or perverse or arbitrary.

15. Before parting with this judgment, we may deal with the submission of the learned counsel for the respondent that the application for amendment could not be allowed inasmuch

A as the same was barred by limitation. We are unable to accept this contention of the learned counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred
B by limitation. This view was also expressed by this Court in ***Pankaja & Anr.*** Vs. ***Yellappa (Dead) by LRs. & Ors.*** [(2004) 6 SCC 415]. In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the
C facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed. It is well settled by a catena of decisions of this Court
D that allowing and rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds. In this connection reliance can be placed on a decision of this court in ***Jai Jai Ram Manohar Lal*** *Vs.* ***National Building Material Supply, Gurgaon [AIR 1969 SC 1267].*** In paragraph 8 of the
E said decision this Court observed that "***since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises; the plaint must be deemed on amendment to have been instituted in the name of the real***
F ***plaintiff on the date on which it was originally instituted."*** *A reading of this observation would amply clear the position that no question of limitation shall arise when mis-description of the name of the original plaintiff or mis-description of the suit property arose in a particular case.* Apart from that in the
G present case, although, the relief claimed before as well as after the amendment remained the same i.e. a decree for specific performance of the contract for sale, even then, in the facts and circumstances of the present case, as noted herein earlier, we do not find why the High Court should have interfered with the
H discretion used by the trial court in allowing the application for

amendment of the plaint. A

16. For the reasons aforesaid, we are unable to sustain the impugned order of the High Court. Accordingly, the impugned order of the High Court is set aside and that of the Second Additional District Judge, Bikaner is restored. The application for amendment of the plaint, as prayed for, is thus allowed. It will B be open to the respondents to file their written statement if the same has not yet been filed and if the same has been filed, it will be open to them to file an additional written statement within a period of one month from the date of supply of a copy of this order to the trial court. C

17. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.

D.G. Appeal partly allowed. D