RAJ KUMAR BHATIA

v.

SUBHASH CHANDER BHATIA

(Civil Appeal No.19400 of 2017)

DECEMBER 15, 2017

[DIPAK MISRA, CJI, A. M. KHANWILKAR AND Dr. D.Y. CHANDRACHUD, JJ.]

Code of Civil Procedure, 1908 – Or. VI, r.7 – Amendment of written statement – Permissibility of – Held: In the original written statement, the appellant had set up the plea that the property in dispute was in the nature of joint family property and that even after the alleged deed of relinquishment, parties were living together as members of a joint Hindu family – Thus, the case sought to be set up by the appellant in the proposed amendment by introducing an averment on the existence of coparcenary/Hindu undivided property, was an elaboration of what was stated in the written statement – The amendment would cause no prejudice to the Plaintiff – High Court in exercise of its jurisdiction u/Art.227 entered upon the merits of the case which is impermissible – Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial – Trial Court in the exercise of its jurisdiction had allowed the amendment u/Or. VI, r.17 – There was no reason for High Court to interfere u/Art.227 – Judgment of the High Court is set aside – Order passed by the Trial Court allowing the amendment of the written statement is accordingly affirmed – Constitution of India – Art. 227.

Constitution of India – Art.227 – Power under, of High Court – Scope of – Held: The supervisory jurisdiction of High Court u/Art.227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction – In the exercise of its jurisdiction u/Art.227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order.

A A relinquishment deed was executed, in respect of the suit property, by the appellant and the respondent in favour of their mother 'S'. 'S' permitted the appellant and the respondent to reside along with her in the property. However, she filed a suit *inter alia* for recovery of possession against the appellant wherein the respondent joined as a co-plaintiff. An application was filed by the appellant for amendment of the written statement, which was allowed. Writ petition filed by the respondent challenging the said order was allowed. Hence, the present appeal.

Allowing the appeal, the Court

C HELD: 1.1 In the original written statement, the appellant had set up the plea that the property in dispute was in the nature of joint family property and that even after the alleged deed of relinquishment, parties were living together as members of a joint hindu family. [Para 10] [537-D]

D 1.2 This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The amendment would cause no prejudice to the Plaintiff. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the E appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. The F supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the G inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227. The amendment would cause no prejudice to H the Plaintiff. [Para 11] [538-E-G; 539-A-B]

Sadhna Lodh v. National Insurance Company **(2003) 3 SCC 524 : [2003] 1 SCR 567 – relied on.** A

Commissioner of Wealth-tax, Kanpur v. Chander Sen **(1986) 3 SCC 567 : [1986] 3 SCR 254 ;** *Yudhishter v. Ashok Kumar* **(1987) 1 SCC 204 : [1987] 1 SCR 516 – referred to.** B

Case Law Reference

[1986] 3 SCR 254	**referred to**	**Para 7**
[1987] 1 SCR 516	**referred to**	**Para 7**
[2003] 1 SCR 567	**relied on**	**Para 11** C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 19400 of 2017.

From the Judgment and Order dated 05.10.2016 by the High Court D of Delhi at New Delhi in C.M. (M) No. 643/2016.

Ms. Geeta Luthra, Sr. Adv, Anshul Duggal, Sanjay Rathi, Ms. Charul D., Parmanand Gaur, Advs for the Appellant.

Gagan Gupta, Adv for the Respondent.

E

The Judgment of the Court was delivered by

Dr. D. Y. CHANDRACHUD, J. 1. The present appeal arises from a judgment of the High Court of Delhi dated 5 October 2016 by which an order of the Trial Court allowing an application filed by the appellant for amendment of the written statement was set aside. F

2. On 11 October 2002, Sharda Rani Bhatia instituted a suit for the recovery of possession, arrears of damages and mesne profits against the appellant.The property in dispute is situated on the first floor at 1/6 Ramesh Nagar, New Delhi. The case of the original plaintiff is that Desh Raj Bhatia acquired the leasehold rights on 13 February 1962. On G his death, his children are stated to have relinquished their rights and interest in favour of their mother, Lajwanti Bhatia. She executed a will bequeathing the property to her son Ratan Lal Bhatia who is stated to have become the exclusive owner of the property on her death. The original plaintiff, Sharda Rani Bhatia is the widow of RatanLal Bhatia. H

A The appellant is the son of Ratan Lal Bhatia. Ratan Lal Bhatia died intestate. On his death, a registered deed of relinquishment was executed in favour of Sharda Rani Bhatia by the appellant and the respondent, the sons of Ratan Lal Bhatia and by Shakti Bhatia in favour of their mother. The original plaintiff is stated to have permitted the appellant and the
B respondent to reside along with her in the property. The suit was filed by Sharda RaniBhatia for recovery of possession from the appellant and for consequential relief. The original plaintiff is stated to have executed a deed of gift in favour of the respondent in 2003 after which he was impleaded as co-plaintiff. The original plaintiff died in 2005 and the suit is being pursued by the respondent.

C

3. The appellant filed his written statement in the suit on 22 February 2003. According to the appellant, the respondent had exercised undue influence in obtaining the deed of relinquishment. According to him, parties had lived together jointly evenafter the alleged relinquishment.The appellant claims that an oral understanding was
D arrived at by which he was to occupy the first and second floorstogether with the terrace whereas the respondent was to occupy the ground floor exclusively and their mother was to live on the ground floor or, with any of her sons, as she desired. Accordingly, it has been alleged that the family arrangement was acted upon and the appellant is in occupation of the first and second floors together with the terrace while the respondent
E is in possession of the ground floor.

4. Issues were framed on 14 August 2003. The respondent moved an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint on 7 February 2013, which was allowed on 21 September 2013. The appellant filed a written statement to the amended
F plaint. The appellant filed an application for amendment of the written statement in March 2016, which was opposed by the respondent. The Trial Court allowed the application by an order dated 11 April 2016.

5. The respondent filed an application under Order 47 Rule 1 of CPC seeking review of the orderdated 11 April 2016. On 3 June 2016,
G the respondent filed a writ petition under Article 227 of the Constitution. The petition was allowed by the impugned order dated 5 October 2016.

6. By the proposed amendment, the appellant *inter alia* sought to introduce the following averments in the written statement:

H

"22. That as a matter of fact the property in question is the ancestral, joint Hindu Family Property as initially in view of the pleadings as well the same was purchased by Desh Raj Bhatia, grandfather of the plaintiff No. 2 and the defendant. After the death of Desh Raj Bhatia, who died intestate, the suit property was inherited by all the legal heirs namely Smt. Rajwanti Bhatia (widow), Sunita Rani Bhatia (Daughter), Walaityi Ram Bhatia (Son), Om Prakash Bhatia(Son), Tilak Raj Bhatia (Son), Ratan Lal Bhatia (son), Smt Sita Virmani (daughter), Smt Shakuntala Bhatia (daughter), Jagdish Lal Bhatia (son). All the said legal heirs have relinquished their rights in favour of their widow mother Smt. Lajwanti Bhatia. Thereafter, Smt Lajwati Bhatia before her expiry, have executed a Will in favour of Ratan Lal Bhatia, who is the father of the plaintiff No. 2 and the defendant and after death of Smt. Lajwanti Bhatia, the suit property was inherited by Ratan Lal Bhatia..

24. That it is an admitted position that on the death of Ratan Lal Bhatia, he was survived by his widow Shara Rani Bhatia, plaintiff No. 2, Subhash Chander Bhatia, defendant Raj Kumar Bhatia and one daughter namely Smt. Shakti Rani Bhatia and one daughter namely Smt Sakshi Rani Bhatia and the plaintiff No. 2, defendant and their sister was also having their two children. It is undisputed position that Ratan Lal Bhatia died intestate and the assets as well as the properties left behind by him stands inherited equally in the name of his legal heir and thus the properties left behind by Ratan Lal Bhatia become the coparcenary property for the rights of the grand children of Ratan Lal Bhatia. It is submitted that the grand children of Ratan Lal Bhatia have derived their coparcenary rights in the properties left behind by Ratan Lal Bhatia. Meaning thereby in case of plaintiff No. 2, although he derived 1/4th share in the suit property but legally his own son and daughter being coparcener then his share shall be terms as 1/12theach and likewise the share of defendant which he derived as 1/4th on the death of his father shall also be deemed as 1/12th each with his two sons and the share of Sharda Rani Bhatia which she derived as 1/4th is also to be legally deemed as 1/12th each alongwith her sons and daughter.

A 7. The High Court has held that the amendment sought inthe written statement was not *bona fide*and was not necessary for determining the real question in controversy between the parties. The suit was instituted in 2001 and the written statement was filed in 2003. The High Court held that based on facts which were known to the appellant in 2003, a belated attempt was made thirteen years later in 2016 to B amend the written statement to introduce an averment on the existence of coparcenary / hindu undivided property. On merits, the High Court held that it is a settled principle that after the enactment of the Hindu Succession Act 1956, property which devolves on an individual from a paternal ancestor does not become HUF property but the inheritance is C in the nature of self-acquired property unless an HUF exists at the time of the devolution. This view was based on the judgments of this Court in **Commissioner of Wealth-tax, Kanpur** v **Chander Sen**[1] and **Yudhishter** v **Ashok Kumar**[2]. In the view of the High Court, the averments sought to be introduced by the appellant do not lead to a conclusion of the existence of coparcenary property. While accepting D that in the course of consideringan application for amendment, its merits or demerits should not be evaluated, the High Court nevertheless held that the amendment in the present case was untenable on merits.

8. On behalf of the appellant, it has been urged that necessary averments about the ancestral nature of the property are contained in E the original written statement. Hence, it was urged that the averments which were sought to be elaborated in the amended written statement had their genesis in the original written statement. Based on this premise, it was urged that the amendment was correctly allowed by the Trial Court. The High Court, it was urged, ought not to have interfered under F Article 227 of the Constitution with an order of the Trial Court allowing the amendment. Moreover, it was urged that at the stage of allowing an amendment, the court is not justified in considering the merits of the case which is sought to be pleaded. The High Court, it was submitted, had declined to allow the amendment after reviewing the merits of the defence raised, which was impermissible. The appellant also urged that G the respondent had already filed an application for review of the order passed by the Trial Court on 11 April 2016, allowing the amendment in spite of which, a petition was filed under Article 227.

[1](1986) 3 SCC 567

H [2](1987) 1 SCC 204

9. On the other hand, it was urged on behalf of the respondent that the written statement as originally filed was based on a challenge to the deed of relinquishment executed by the appellant in favour of his mother Sharda Rani Bhatia. The appellant also sought to plead an oral arrangement to the effect that his possession of the suit property would not be disturbed. This, it was urged, amounted to an admission that the property was the self-acquired property of Ratan Lal Bhatia and the appellant cannot be permitted to withdraw the admission by amending the written statement. Moreover, it was urged that issues were framed on 14 August 2003. The respondent had filed its evidence on affidavit and the trial had already commenced prior to the filing of the application for amendment of the written statement.In the absence of due diligence on the part of the appellant, the amendment could not have been allowed. The amendment, it was submitted, changes the fundamental nature of the defence and is aimed at delaying the disposal of the suit.

10. In the original written statement, the appellant had set up the plea that the property in dispute was in the nature of joint family property and that even after the alleged deed of relinquishment, parties were living together as members of a joint hindu family. The written statement inter alia contains the following averments :

> "10...The property is the joint family property. The sister of the respondent is married and well settled at her matrimonial home...
>
> The defendant, plaintiff and the said S C Bhatia were jointly occupying the said property as being the undivided joint family property. That even after execution of the alleged relinquishment dee the abovesaid parties were living as joint family and the suit property being the undivided joint family...
>
> That all family members were using ground floor, first floor and second floor jointly as undivided joint family property."

In paragraph 12 of the written statement, the appellant has set up an oral family arrangement,thus :

> "12...That acting upon the oral family arrangement, an amount of Rs. 6, 00, 000/- was taken out of the common fund of the Joint Hindu Undivided Family. The said amount has been handed over to Dr R C Bhatia and Shri Shakti Bhatia both residents of Modi Nagar, U P on interest. The said two persons are regularly paying interest to the plaintiff."

A In "the reply on merits", the appellant has averred that :

> "2...The defendant is in possession of the first floor, second floor and terrace of the said property as owner as per the oral family settlement of the undivided Joint Hindu Property...
>
> That all other assets movable as well as immovable including the factory in the name and style of Rattan Industries situated at 18 DLF Industrial Modi Nagar, are still in joint possession and ownership and no division on metes and bounds has taken place. Though the "said property" has been divided by mets and bound as per the oral family armament. The plaintiff has made the present averment at the behest of her younger son Shri S C Bhatia with an ill intention and motive to deprive the defendant of his lawful occupation. That as per the said oral family arrangements, an amount of Rs. 6 lacs from joint funds has been handed over on interest to Dr R C Bhatia and Smt Shakti Bhatia, son in law and daughter of the plaintiff. That R C Bhatia and Smt Shakti Bhatia have been regularly paying interest to the plaintiff on the said amount."

11. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In **Sadhna Lodhv National Insurance Company**[3], this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was

[3](2003) 3 SCC 524

no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21 September 2013 that an amendment of the plaint was allowed by the Trial Court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the Plaintiff.

12. In the view which we have taken, it has not become necessary to consider the alternative submission of the appellant namely, that recourse taken to the jurisdiction under Article 227 by the respondent after filing an application for review before the Trial Court was misconceived. Since the matter has been argued on merits, we have dealt with the rival submissions.

13. Hence, on a conspectus of the facts and having due regard to the nature of the jurisdiction under Article 227 which the High Court purported to exercise, we have come to the conclusion that the impugned judgment and order is unsustainable. We accordingly allow the appeal and set aside the judgment of the High Court. The order passed by the Trial Court allowing the amendment of the written statement is accordingly affirmed.

14. There shall in the circumstances be no order as to costs.

Divya Pandey

Appeal allowed.