Mohinder Kumar Mehra vs Roop Rani Mehra on 11 December, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5822

Author: Ashok Bhushan

Bench: Ashok Bhushan, A.K. Sikri

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.19977 OF 2017
(Arising out of SLP (C) No. 26695/2017)

MOHINDER KUMAR MEHRA …APPELLANT

VERSUS

ROOP RANI MEHRA & ORS. …RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

1. This appeal has been filed against the judgment of Delhi High Court dated 02.08.2017 by which judgment, the Writ Petition filed by the appellant challenging the order of Additional District Judge dismissing the application of the plaintiff under Order VI Rule 17 of the Civil Procedure Code (hereinafter referred to as "C.P.C.") has been dismissed. Facts in brief necessary to be noted for deciding the appeal are:-

> The appellant and respondent No.5 are sons of respondent No.1. Respondent Nos. 2, 3 and 4 are wife, son and daughter of another brother of appellant. The appellant's father Late Shri O.P. Mehra alongwith his wife and three minor sons came to Delhi from Lahore after Partition. Shri O.P. Mehra died in 1951. The respondent No.1 and her sons were held entitled to compensation under Order of Settlement Commissioner, New Delhi dated 14.08.1956. The respondent No. 1 was declared as highest bidder in a public auction for a House No. D-4, Lajpat Nagar, area measuring

300 sq. yds. which amount was adjusted from the claim to which the respondent No.1 and her sons were held entitled.

Another property was also allotted in the name of respondent No.1 of area measuring 200 sq. yds. at G-11, Nizamuddin, New Delhi. The property G-11, Nizamuddin was sold by respondent No.1 in the year 2000. On 04.11.2009, the appellant filed a Suit No. 2082 of 2009 against the respondents seeking partition of the suit property described in Appendix A. In Appendix A, only property mentioned was Plot No.D-4, Lajpat Nagar, Part-II, New Delhi.

Written statement was filed by the respondent and on 17.05.2010, issues were framed by the Court. 10.08.2010 was fixed for recording the evidence of the plaintiff. The plaintiff prayed for time for producing evidence. On 17.01.2011, plaintiff filed an application under Order VI Rule 17 praying for amendment of the plaint. By the application plaintiff sought to add certain pleadings and a prayer claiming share in the sale proceeds received by defendant No.1 from sale of the property of Nizamuddin. Application filed by the plaintiff was objected by the defendants by filing a reply. It was pleaded that several opportunities were given to the plaintiff to lead evidence and last opportunity was given on 08.12.2010 to file his evidence by 28.01.2011. It was further pleaded that in the sale document of Nizamuddin property, plaintiff himself was a witness. The relief which is sought to be amended is barred by time and is altogether a separate cause of action. Plaintiff filed a rejoinder in which it was stated that plaintiff came to know that plaintiff had undivided share in the property at Nizamuddin only in November, 2010. He further stated that he informed all the facts to his earlier counsel but in the plaint the mention of Nizamuddin property was not made by earlier counsel and while preparing for evidence in the suit, the fact was noticed by the plaintiff only in November, 2010 and hence application for amendment has been filed. The Court passed on order on 26.07.2011 granting the plaintiff four week's time as a last opportunity to file the examination-in-chief of his witnesses subject to payment of Rs.5,000/-, with regard to I.A. No.1001 of 2011, it was stated "Needless to say in Case I.A. No.1001/2011 is allowed, appropriate orders for evidence of the plaintiff would be made." Parties led evidence and suit was fixed for final disposal. On 14.02.2014, an order was passed directing that amendment application shall be considered at the time of final hearing of the suit. Plaintiff filed an application for amendment of issues, which was rejected by the High Court on 09.02.2015. The plaintiff filed a FAO (OS) No.196 of 2015, in which Division Bench of the High Court by order dated 28.04.2015 directed the learned Single Judge to decide the amendment application I.A. No. 1001 of 2011. In the meantime on account of pecuniary jurisdiction of the case, the suit was transferred to the Court of Additional District Judge, Saket. The Additional District Judge took up the amendment application and vide order dated 24.10.2016 rejected the amendment application. The trial court took the view that the suit for recovery of money of his share could have been filed by plaintiff within three years from the date of sale. The trial court held that the amendment sought is barred by time, hence the

application was rejected.

A Writ Petition under Article 227 was filed by the plaintiff in the High Court challenging the order dated 24.10.2016, which has been dismissed by the High Court by the impugned judgment, against which this appeal has been filed.

2. We have heard Ms. Shobha, learned counsel for the appellant. Shri S.B. Upadhyay, learned counsel was heard for respondent No.1, Shri Rana S. Biswas and Ms. Sharmila Upadhyay, has been heard for respondent No.5. Learned counsel for respondent No.5 having adopted the submissions raised on behalf of respondent No.1, we shall hereinafter refer to the submissions of respondent No.1 and respondent No.5 as submissions on behalf of respondents.

3. Learned counsel for the appellant in support of the appeal contends that the application filed by the plaintiff for amendment under Order VI Rule 17 was not barred by time. Relying on Article 110 of the Limitation Act, 1963, learned counsel submits that the limitation for enforcing a right to share in a joint family property is twelve years, hence the claim was not barred by time. The High Court on one hand refrained itself from saying anything on the issue of limitation on Article 110 of the Limitation Act and on the other hand has given an approval to the view of the learned Additional District Judge that suit is barred by time. The High Court has failed to appreciate that parties have already led evidence relating to proposed amendment which fact was recorded by the High Court on 14.02.2014 and only a formal order of allowing amendment was required, which would not have caused any prejudice to the defendant. The High Court on technical grounds has rejected the amendment application whereas it is well settled that amendment applications are to be liberally considered and unless any prejudice is shown to be caused to the defendant, the applications are allowed.

4. Learned counsel for the respondent refuting the submission of the appellant contends that amendment application filed by the appellant could not have been allowed in view of Proviso to Order VI Rule 17 C.P.C. It is submitted that trial in the suit has already commenced and plaintiff failed to show that in spite of due diligence, he could not raise the matter earlier, hence the trial court has rightly rejected the amendment application. It is further stated that claim was barred by time. The amendment sought to be made related to claim for recovery of money for which limitation is only three years, as has been rightly held by the trial court. There is no substance in the case of the plaintiff that due to mistake of earlier counsel, the Nizamuddin property could not be included in the plaint. Plaintiff himself has verified the plaint and cannot be allowed to take any such plea. The Proviso to Order VI Rule 17 does not permit any such amendment as now prayed by plaintiff. It is submitted that there was no due diligence at all on the part of the appellant-plaintiff so as to enable the Court to allow the amendment exercising the power reserved to the Court under Proviso. The appellant in his repllication has stated that Lajpat Nagar property was the one and the only joint family property. By allowing the amendment, the very nature of the suit shall be changed, causing great prejudice to respondent No.1. Learned counsel for the respondents have also raised submissions regarding the merits of the claim of the plaintiff.

5. We have considered the submissions of the learned counsel for the parties and have perused the records.

6. Order VI Rule 17 of C.P.C. as it now exists is as follows:-

> 17. Amendment of Pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the par-

ties:

> Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclu- sion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. By Amendment Act 46 of 1999 with a view to shortage litigation and speed of the trial of the civil suits, Rule 17 of Order VI was omitted, which provision was restored by Amendment Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control filing of application for amending the pleading subsequent to commencement of trial. Not permitting amendment subsequent to commencement of the trial is with the object that when evidence is led on pleadings in a case, no new case be allowed to set up by amendments. The proviso, however, contains an exception by reserving right of the Court to grant amendment even after commencement of the trial, when it is shown that in spite of diligence, the said pleas could not be taken earlier. The object for adding proviso is to curtail delay and expedite adjudication of the cases. This Court in Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344 has noted the object of Rule 17 in Para 26 which is to the following effect:

> "26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if applica- tion is filed after commencement of trial, it has to be shown that in spite of due dili- gence, such amendment could not have been sought earlier. The object is to prevent friv- olous applications which are filed to delay the trial. There is no illegality in the pro- vision."

> 8. The judgment on which much reliance has been placed by learned counsel for the appellant is Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors. (2006) 4 SCC

385. This Court had occasion to consider and interpret Order VI Rule 17 in Paragraphs 15 and 16, in which following has been held:-

"15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for de- termining the real question in controversy be- tween the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts.

Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in contro- versy between the parties."

9. Although Order VI Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of Proviso to the fact that no application for amendment shall be allowed after the trial is commenced. Reserving the Court's jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the commencement of trial. In a suit when trial commences? Order XVIII of the C.P.C. deal with "Hearing of the Suit and Examination of Witnesses". Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues. Order XV deals with "Disposal of the Suit at the first hearing", when it appears that the parties are not in issue of any question of law or a fact. After issues are framed and case is fixed for hearing and the party having right to begin is to produce his evidence, the trial of suit commences. This Court in Vidyabai & Ors. Vs. Padmalatha & Anr., (2009) 2 SCC 409 held that filing of an affidavit in lieu of examination-in-chief of the witnesses amounts to commencement of proceedings. In Paragraph 11 of the judgment, following has been held:-

"11. From the order passed by the learned trial Judge, it is evident that the respon- dents had not been able to fulfil the said precondition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the pro- ceeding. Filing of an affidavit in lieu of ex- amination-in-chief of the witness, in our opinion, would amount to "commencement of pro- ceeding"."

10.Coming to the facts of the present case, it is clear from the record that issues were framed on 17.05.2010 and case was fixed for recording of evidence of plaintiff on 10.08.2010. Plaintiff did not produce the evidence and took adjournment and in the meantime filed an application under Order VI Rule 16 or 17 on 17.01.2011. Thereafter the Court on 26.07.2011 has granted four week's time as the last opportunity to file the examination-in-chief. It is useful to quote Paragraph 4 of the Order, which is to the following effect:-

4. In view of the above, it is directed as follows:-

(i) Having regard to the delay which has ensued, subject to the plaintiff paying costs of Rs.5,000/- each to the contesting defendant No.1 and 5 within a period of one week, the plaintiff is permitted four weeks time as a last opportunity to file the examination-in-chief of his witnesses on affidavit.

(ii) The matter shall be listed before the Joint Registrar for recording of

plaintiffs evidence on 29 August, 2011.

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(iii) The case shall be listed before court for direction on 18th January, 2012.

(iv) Needless to say in case IA No. 1001/2011 is allowed, appropriate orders for evidence of the plaintiff would be made."

11.Thus technically trial commenced when the date was fixed for leading evidence by the plaintiff but actually the amendment application was filed before the evidence was led by the plaintiff. The parties led evidence after the amendment application was filed. In this context, it is necessary to notice the order of the High Court dated 14.02.2014, which records that evidence of both the parties have been concluded. Most important fact to be noticed in the order is that the Court recorded the statement of plaintiff's counsel that parties have led evidence in view of the amendment sought in the plaint. Order dated 14.02.2014 is to the following effect:-

"The evidence of both the parties has been concluded. The matter has been listed for final disposal. Learned counsel for the plaintiff has pointed out the order dated 26th July, 2011 wherein observation was made that in case I.A. No. 1001/2011 under Order VI Rule 17 CPC for amendment of the plaint is allowed, appropriate order for evidence of the plaintiff would be made. As a matter of fact, plaintiffs counsel stated that the parties have also led evidence in view of amendment sought in the plaint and the same covered in the evidence produced by the parties. The defendants, however, alleged that the said amendment was unnecessary and was opposed by the defendants and issue involved in the said circumstances be considered at the time of final hearing of suit as defendant No.1 is more than 85 years old lady, the suit itself be decided.

List this matter in the category of Short cause on 22 May, 2014....."

12.By same order dated 14.02.2014, the Court directed amendment application be taken at the time of final hearing. As noticed above, when plaintiff sought for framing additional issues which application was rejected, the matter was taken before the Division Bench and the Division Bench

ultimately has directed the learned Single Judge to consider the amendment application. Subsequently, the amendment application was rejected on 24.10.2016.

13.The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's cases was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since plaintiff led his evidence on amended pleadings also as claimed by him.

14.This Court in Chander Kanta Bansal Vs. Rajinder Singh Anand, (2008) 5 SCC 117 has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

> "13. The entire object of the said amendment is to stall filing of applications for amend- ing a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out enter- taining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases."

15.Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We thus are of the view that looking to the purpose and object of the Proviso, present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the Proviso.

16.Now, we come to the one of the main reason given by the trial court in rejecting the application that the claim was barred by limitation. The Nizamuddin property, which property was sought to be added in the suit for partition was a property, which was sold by respondent No.1 in the year 2000, in which the plaintiff was also one of the witnesses. The trial court took the view that the suit was simplicitor for recovery of money for which limitation is only three years from the date of sale and not twelve years as claimed by the applicant. With regard to the limitation, the plaintiff-appellant relies on Article 110 of the Limitation Act, which is to the following effect:-

> Article Description of Period of Time from No. Suitt Limitation which period begins to run 110 By a person Twelve When the excluded from a Years exclusion joint family becomes property to known to enforce a right the to share therein. plaintiff

17.Present is not a case of simply recovery of money.

Plaintiff's claim is to enforce a right to share in the Nizamuddin property, which was sold in the year 2000 and according to plaintiff, the limitation is twelve years as per Article 110. The High Court has also noted the order of Additional District Judge holding that claim is barred by time. The High Court refrained from expressing any final opinion on the question of limitation but observed that the view taken by the Additional District Judge is correct. It is relevant to refer to Para 28 of the judgment, which is to the following effect:-

> "The learned Additional District Judge in the impugned order has also accepted the contention of the counsel for the respondents/defendants of the relief sought to be added by way of amendment being barred by time and Articles 106 and 110 of the Schedule to the Limitation Act being not applicable. The counsel for the petitioner/plaintiff has been unable to show any precedent that a claim for a definite share in the sale proceeds of, a property would be governed by Articles 106 and Article 110 supra. However, the same being in the nature of entering into the merits of the amendment, I refrain from dealing with the said aspect, though the view taken by the learned Additional District Judge appears to be reasonable and plausible."

18.In the facts of the present case, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within twelve years were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment in the facts of the present case, it was too early to come to a conclusion that limitation was only three years and not twelve years as claimed by the plaintiff. The High Court on the one hand refrained from expressing any opinion and on the other hand has expressed his agreement with the view taken by the Additional District Judge rejecting the application as barred by time.

19.While considering the prayer of amendment of the pleadings by a party, this Court in the case of Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors., (2015) 13 SCC 132 has again reiterated the basic principles, which are to be kept in mind while considering such applications in Paragrpahs 20, 21 and 22, which is quoted as below:-

> "20. It is well settled that rules of proce- dure are intended to be a handmaid to the ad- ministration of justice. A party cannot be re- fused just relief merely because of some mis- take, negligence, inadvertence or even infrac- tion of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

> 21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.
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> 22. In Jai Jai Ram Manohar Lal v. National Building Material Supply3, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or techni-

cal limitations."

20.Although, learned counsel for the parties in their submissions have raised various submissions on the merits of the claim of the parties, which need no consideration by us since the only issue which has to be considered is as to whether the amendment application filed by the plaintiff deserves to be allowed or not. We make it clear that we have neither entered into merits of the claim nor have expressed any opinion on the merits of the claim of either party and it is for the trial court to consider the issues on merits while deciding the suit.

21.Taking into overall consideration of the facts of the present case and specially the fact that evidence by the parties was led after the filing of the amendment application, we are of the view that justice could have been served in allowing the amendment application. We thus allow the appeal and set aside the order of the High Court as well as the order of the Additional District Judge. The amendment application I.A. No. 1001 of 2011 stand allowed. Both the parties have led their evidences and case has already been fixed for hearing, however, to avoid any prejudice to the parties, justice will be served in giving a limited opportunity to the parties to lead additional evidence, if they so desire.

22.We thus direct that the parties may file this order before the trial court within two weeks from today, on receipt of the order, the trial court shall consider on framing of additional issue, if necessary and shall thereafter grant opportunity to the parties to lead additional evidence, if any. The entire exercise shall be completed within three months and thereafter suit be decided finally. The parties shall bear their own costs. We make it clear that we have not expressed any opinion on merits of the case including on the question of applicability of Article 110 of the Limitation Act and all the issues shall be decided on the basis of materials on record without being influenced by any observation made by us.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
DECEMBER 11, 2017.