

Vijay Hathising Shah vs Gitaben Parshottamdas Mukhi . on 25 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 1119, 2019 (5) SCC 360, (2019) 136 ALL LR 232, (2019) 145 REVDEC 614, (2019) 1 CLR 806 (SC), (2019) 1 CURCC 316, (2019) 201 ALLINDCAS 127, (2019) 2 ICC 49, 2019 (2) KCCR SN 125 (SC), (2019) 2 RECCIVR 291, (2019) 3 RAJ LW 1800, (2019) 3 SCALE 811, (2019) 4 MPLJ 596, (2019) 6 MAH LJ 816, AIR 2019 SC (CIV) 1338, AIRONLINE 2019 SC 102

Author: Abhay Manohar Sapre

Bench: Dinesh Maheshwari, Abhay Manohar Sapre

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2012 OF 2019
(Arising out of S.L.P.(C) No.1873 of 2012)

Vijay Hathising Shah & Anr.

...Appellant(s)

VERSUS

Gitaben Parshottamdas Mukhi & Ors.

...Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 08.01.2008 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.6737 of 2007 whereby the High

Court allowed the Special Civil Application filed by respondent No.1 herein and while setting aside the order dated 23.02.2007 of the Trial Court allowed the application for amendment of the plaint filed by respondent No.1 herein.

3. The appeal involves a short point for its disposal as would be clear from the facts mentioned hereinbelow.

4. The appellants are the proposed defendants whereas respondent No.1 is the plaintiff and other respondents are the defendants in Civil Suit No.6170 of 1990 pending in the City Civil Court, Ahmedabad.

5. Respondent No.1 (plaintiff) has filed the suit for partition of the suit land and for consequential reliefs against the other respondents. In the said suit, respondent No.1 filed an application for amendment of the plaint. The Trial Court by order dated 23.02.2007 rejected the said application.

6. Respondent No.1 felt aggrieved by the rejection of her amendment application by the Trial Court and filed Special Civil Application No.6737/2007 in the High Court of Gujarat at Ahmedabad. By impugned order, the High Court allowed the Special Civil Application and while setting aside the order dated 23.02.2007 of the Trial Court allowed the amendment application giving rise to filing of this appeal by way of special leave in this Court by the proposed defendants.

7. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the Special Civil Application filed by respondent No.1(plaintiff) and was, therefore, justified in allowing the amendment application.

8. Heard Mr. P.H. Parekh, learned senior counsel for the appellants and Mr. Priank Adhayarn, learned counsel for the respondents.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order restore the order of the Trial Court and reject the application filed by respondent No.1 (plaintiff) for amendment of her plaint.

10. In our view, the Trial Court was right in rejecting the application. This we say for more than one reason. First, it was wholly belated; Second, respondent No.1(plaintiff) filed the application for amendment of the plaint when the trial in the suit was almost over and the case was fixed for final arguments; and Third, the suit could still be decided even without there being any necessity to seek any amendment in the plaint. In our view, amendment in the plaint was not really required for determination of the issues in the suit.

11. It is for these reasons, the impugned order is legally unsustainable. The appeal thus succeeds and is accordingly allowed. The impugned order is set aside and the order dated 23.02.2007 of the Trial Court is restored.

12. The Trial Court is directed to decide the civil suit within one month strictly in accordance with law.

.....J. [ABHAY MANOHAR SAPRE]J.
[DINESH MAHESHWARI] New Delhi;

February 25, 2019