Daya Ram Vs. Puran Chand and anr.

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Court : Punjab and Haryana

Decided On : Oct-24-1973

Reported in : AIR1974P& H194

Judge : R.S. Narula, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 115; Punjab Pre-emption Act - Sections 15; Representation of the People Act - Sections 84

Appeal No. : Civil Revn. No. 924 of 1973

Appellant : Daya Ram

Respondent : Puran Chand and anr.

Judgement :

ORDER

1. This petition under Section 115 of the Code of Civil Procedure is directed against the order of the Court of Shri Subhash Chander, Subordinate Judge Second Class, Karnal, dated June 11, 1973, whereby he allowed the application of the vendee-defendant-respondent for amendment of his written statement in the petitioner's suit for pre-emption so as to add to the original defences taken up by the vendee a new defence to the effect that Taraori where the property in dispute is situate is a town and there is no right of pre-emption prevalent in that town, and the suit is, therefore, not maintainable, as the suit property was not pre-emptible in view of the fact that there was no custom of pre-emption prevalent in Taraori. Learned Counsel for the plaintiff-petitioner has stated that the original defences taken up by the vendee in the petitioner's suit were that the petitioner was not the brother of the vendor, that the property in dispute was not land within the meaning of Section 15 of the Punjab Pre-emption Act, but was a shop, that the plaintiff had waived his right of pre-emption, and that the suit was barred by time. He submits that at the fag end of the trial of the suit at the stage of final arguments the vendee made the application for taking up an additional defence in his written statement by amendment thereof on the solitary ground that though Taraori is a town and has been so held by various Courts, the vendee inadvertently could not take up this plea earlier in his written statement.

2. Mr. N. C. Jain, learned Counsel for the plaintiff-petitioner, has argued that as against the above-mentioned solitary ground on which the amendment was sought, the trial Court has based its decision on the ground that the plea that Taraori was a town was not taken by the defendant due to the negligence on the part of the counsel for the defendant. He submits that the learned Subordinate Judge had no jurisdiction to make out a new case for the vendee-respondent so as to allow his application on a

ground which was neither pleaded by him, nor is consistent with the ground actually taken up by the vendee in his application. He has further submitted that if negligence of counsel in taking up a plea were to be a sufficient ground for allowing an amendment of the written statement at such a late stage, it would open flood gates for such applications as it will be very easy for Courts to say that the plea could not be taken on account of the inadvertence or negligence of the counsel. He says that the suit had been pending for two years, and when it was about to be decreed it dawned on the defendant-vendee to take up a new plea which should not have been allowed to be taken up by him.

3-4. The broad and real ground on which an amendment of a pleading can be allowed is given in Order 6 Rule 17 of the Code of Civil Procedure. It is stated therein that all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. So far as the stage at which an amendment for the above-mentioned purpose can be allowed, it is again made clear in the above-mentioned provision itself that the Court may allow an amendment of the pleadings of the parties at any stage of the proceedings. In Paragraph 3 of the vendee-respondent's application for amendment it had been clearly pleaded that for the determination of the real question regarding the right of pre-emption between the parties it was expedient and in the interest of justice and necessary for the full disposal of the case that the amendment prayed for by the vendee should be allowed to be made in his written statement by taking up the relevant additional plea. Whether the original plea could not be taken up on account of the inadvertence of the defendant or on account of the negligence of the counsel is a mere embellishment and does not in any way affect the merits of the controversy involved in deciding the application for amendment. It is common knowledge that legal pleas are hardly ever known to the litigants themselves, and it is usual for their legal advisers to take up such pleas on facts disclosed by their clients. In this view of the matter the observation of the trial Court to the effect that the relevant plea does not appear to have been taken up at the earliest stage on account of the negligence of the counsel does not appear to be unjustified. Of course, it cannot be laid down as a proposition of law that any plea omitted from a particular pleading on account of mere negligence of the counsel could always be allowed to be added by way of an amendment of that pleading. Each case depends on its own facts. It has been held by Harbans Singh., C. J., in Raghvir Prashad v. Chet Ram, 1971 Cur LJ 612, that howsoever negligent or careless may have been the first omission and, however late the proposed amendment, the amendment of pleadings should be allowed if it can be made without injustice to the other side. It was further observed by the learned Chief Justice in that case that there is no injustice if the other side can be compensated for by costs. Though that case related to the amendment of a plaint, the present case is on a better footing inasmuch as the trial Court has allowed the amendment of the written statement. The difference in the criteria for allowing the amendment of a written statement as compared with the grounds on which the amendment of a plaint may be allowed has been brought out in the judgment of Mahajan, J., in Parkash Singh v. Harcharan Singh, (1967) 69 Pun LR 732. Though that case related to the amendment of a recriminatory petition under Section 84 of the Representation of the People Act, it was observed by the learned Judge that certain rules are common to the amendment of a plaint and a written statement, but the written statement stands on a different footing than a plaint with regard to a new claim. It was held that though a new claim cannot be raised in a plaint after limitation has stepped in, the same will not be the position with regard to a new defence sought to be raised by an amendment of the written statement. In the present case no serious prejudice or

injustice has been caused to the plaintiff-petitioner by the additional plea having been allowed to be raised in the written statement of the vendee-respondent. The plaintiff will have a right to contest the new plea by filing a replication, if so advised, and by rebutting any evidence which may be led by the vendee-respondent in support of the added plea. He has been compensation for the unnecessary hearings occasioned by the amendment by order for payment of a substantial amount as costs for allowing the amendment. That the amendment was allowed at a late stage makes no difference as amendment of pleadings can be allowed in a suitable case and for good legal reasons even at the first or second appellate stage. If the new plea taken up by the defendant is incorrect, the plaintiff has nothing to fear. If on the other hand, the plea is factually correct, it would be a pity that a claim which cannot be decreed according to law would succeed so as to deprive a rightful owner of his property and of his fundamental right to own and possess the property merely because the vendee did not take up in his original written statement a legal plea which goes to the root of the case. The amendment in question was, therefore, necessary for the purpose of determining the real question in controversy (viz., plaintiff-petitioner's right to pre-empt the sale) between the parties. In these circumstances the amendment has been rightly allowed and there is no valid ground for interfering with the order of the trial Court.

This petition must, therefore fail, and is accordingly dismissed with costs.

5. Petition dismissed.