

Civil Revision**Present: The Hon'ble Justice Jyotirmay Bhattacharya*****C.O. No.3190 of 2009*****Judgment On: 07-04-2010.****Smt. Ujwal Kaur & Ors****-Vs-****Sri Subhash Chandra Agarwalla & Anr.****POINTS:**

AMENDMENT OF PLAINT-Incorporation of additional relief for enforcement by amendment-
Oral agreement entered between the parties pleaded in original plaint-Whether the amendment be
allowed-Code of Civil Procedure, 1908 O 6 R 17-Constitution of India, Art. 227

FACTS:

The plaintiffs' application for amendment of plaint was allowed by the learned Trial Judge. The defendants are aggrieved by the said order. Hence, the defendants have come before this Court with this application under Article 227 of the Constitution of India for challenging the propriety of the said order.

HELD:

When the plaintiffs want to amend their plaint for incorporating therein an additional relief for enforcement of an agreement entered between the parties this Court does not find any justification to reject the plaintiffs' such prayer for amendment particularly when the factum of such oral agreement entered between the parties had already been pleaded in the original plaint. While considering the plaintiffs' prayer for amendment, this Court cannot consider as to whether the agreement is a continuation of earlier agreement or not.

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For the Petitioners: Mr. Sabyasachi Bhattacharya,
Ms. Sohini Bhattacharya.

For the Opposite : Mr. K. Thakkar,
Parties : Mr. Surojit Sen,
Mr. Dipak Chowdhury.

THE COURT:

1) The plaintiffs' application for amendment of plaint was allowed by the learned Trial Judge vide order dated 4th may, 2009 passed in Title Suit No.141 of 1997. The defendants are aggrieved by the said order. Hence, the defendants have come before this Court with this application under Article 227 of the Constitution of India for challenging the propriety of the said order.

2) Heard Mr. Bhattacharya, learned Advocate appearing for the petitioners and Mr. Thakkar, learned Advocate appearing for the opposite parties. Considered the materials on record, including the order impugned.

3) Let me now consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case.

4) The plaintiffs filed a suit for specific performance of contract against the defendant herein. It was stated by the plaintiff in the plaint that originally in 1993 all the surviving heirs of late S. Mohan Singh, namely, six branches of co-sharers jointly approached the plaintiff no.1 offering to sell the said property at premises No.25/1B, Mohini Mohon Road, Calcutta – 700020 free from all encumbrances at a lump sum price of Rs.12,00,000/- only and the plaintiff no.1 agreed to the said offer of the said six branches of co-sharers. A draft agreement was also prepared by one of the

vendors who not only acted for himself but also acted as representatives of the other co-sharers. The copy of the said draft was approved by the plaintiff and the said approved draft was retained by the vendors for obtaining required permission formally.

5) Since the said six branches of co-sharers were subsequently taking steps to enter into an agreement for sale with one Doulat M. Mehta and his nominees, the plaintiffs filed a suit against the said six branches of co-sharers for a declaration that the agreement for sale which was entered into between the parties in 1993 is still subsisting with a further prayer for issuance of direction upon the defendants therein to execute and register sale deed in respect of the said suit property in favour of the plaintiff no.1 on acceptance of the consideration money.

6) Subsequently at the intervention of the common friends and well wishers of the parties, the said suit was compromised between them on the basis of the terms contained in the compromise decree.

7) It was provided therein that the agreement for sale which was entered into between the defendant and one Daulat M. Mehta and his nominees would be dropped and/or cancelled and the said six branches of co-sharers would enter into an agreement for sale with the plaintiffs separately for transfer of their share in the suit property in favour of the plaintiffs. Thus, the said suit ended in compromise.

8) On 16th December, 1994 all the joint co-owners belonging to the said six branches of co-sharers entered into separate agreement for sale for transfer of their undivided one-sixth share in the suit property with the plaintiff no.1 by receiving a sum of Rs.50,000/- by way of earnest money. In the

said agreement it was provided that the sale will be completed for a consideration of Rs.2,00,000/- for each branch of the six branches of co-sharers.

9) Since the defendants herein did not perform their part of the contract and also failed to complete the said transaction, the plaintiffs filed the instant suit for specific performance of the agreement for sale dated 16th December, 1994 and for implementation of the compromise decree dated 21st September, 1995 with a decree for confirmation of possession in the suit property.

10) The defendant is contesting the said suit by filing written statement denying the allegations made out in the plaint.

11) Subsequently, the plaintiffs filed an application for amendment of plaint for introducing the verbal agreement which was entered into between the parties in July, 1993 in the plaint and prayed for enforcement of the said oral and/or verbal agreement of 1993 in addition to the relief for enforcement of the written agreement for sale dated 16th December, 1994 as well as the compromise decree passed in the earlier suit on 21st September, 1995.

12) Such prayer for amendment of plaint was allowed by the learned Trial Judge by holding inter alia that the proposed amendment is necessary not only for proper and effective adjudication of the dispute in the suit but also for clarifying the ambiguity in the original pleadings of the plaintiff in the plaint.

13) The propriety of the said order is under challenge before this Court.

14) Let me now consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case.

15) On perusal of the original pleadings made out in the plaint, this Court finds that though the plaintiffs referred to the earlier oral agreement allegedly entered into between the parties in July, 1993, but they did not pray for specific performance of the said contract in this suit. The plaintiff not only referred to the earlier suit between the parties in the original plaint but also the fate of the said suit was also mentioned therein. The plaintiff also stated in the earlier plaint that the original suit ended in compromise whereby the agreement entered into between the defendants and the said Mr. Mehta was treated as dropped and/or cancelled. The said Mehta and his wife made a written declaration stating that they had no right, title, interest, claim or demand in respect of the suit property under any agreement or otherwise. It was further stated therein that the defendant no.1 in the earlier suit died intestate on 14th February, 1994 during the pendency of the said suit and his legal heirs and representatives were substituted in the place of the said deceased in the said suit. It was further stated therein that all the joint owners belonging to each of the six branches of co-sharers entered into separate agreement for sale with the plaintiffs on 16th December, 1994 but since the defendant did not fulfill their obligation under the agreement, the said suit was filed for specific performance of the agreement dated 16th December, 1994 and for implementation of the compromise decree passed in the earlier suit on 21st September, 1995.

16) Thus, when the plaintiffs want to amend their plaint for incorporating therein an additional relief for enforcement of an agreement entered between the parties on July, 1993, this Court does

not find any justification to reject the plaintiffs' such prayer for amendment particularly when the factum of such oral agreement entered between the parties in 1993 had already been pleaded in the original plaint. While considering the plaintiffs' prayer for amendment, this Court cannot consider as to whether the agreement of 1994 is a continuation of earlier agreement of 1993 or not. Furthermore the effect of not granting any relief for enforcement of the said contract while disposing of the earlier suit on compromise, is also a matter to be considered in this suit, but such ascertainment can be made after allowing such amendment provided further an issue is raised by the defendant in this regard at the time of the trial of the suit.

17) Under such circumstances, this Court cannot hold that the amendment is a mala fide one and/or is not required for complete adjudication of the dispute involved in the suit.

18) Under such circumstances, this Court holds that the learned Trial Judge was justified in allowing the plaintiffs to amend the plaint.

19) Thus, this Court does not find any reason to interfere with the impugned order.

20) The plaintiffs are permitted to carryout such amendment as per Order 6 Rule 18 of the Code of Civil Procedure within two weeks from date, if such amendment has not been carried out earlier. The defendant is permitted to file additional written statement to the amended plaint within three weeks from the date of the service of the copy of the amended plaint upon them and in the event the copy of the amended plaint has already been served upon them earlier, the defendant is permitted to file additional written statement within three weeks from date.

21) The revisional application is, thus, disposed of with the above observations.

22) Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)