REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2366 of 2010

Mahila Ramkali Devi and others .....Appellant(s)

versus

Nandram (D) Thr. LRs. and others .....Respondent(s)

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M. Y. EQBAL, J.

This appeal by special leave is directed against the judgment dated 01.03.2005 of the High Court of Madhya Pradesh, which allowed the respondents' appeal and dismissed the suit filed by the plaintiff-Appellants for declaration of title and possession of the suit property.

2. The factual matrix of the case is that the suit property was originally owned by Hardayal who had two sons Raghuvardayal and Mahadev Prasad. When Hardayal died, the suit property fell to the share of Raghuvardayal and on his

death it passed on to his wife Sumitra and then his son Radhakishan and then Radhakishan's wife Ajuddhibai.

3. The plaintiff/appellant no.1 filed a suit for declaration of title and possession of the suit property in Gwalior against the deceased Nandram and deceased Kashiram, who were original defendant nos.1 and 2 respectively and are now being represented through legal representatives and also against defendant no.3 Rukmani Bai. The case of the Appellants was that before Ajuddhibai died issueless in 22.6.1961, she had executed a Will dated 21.1.1961 in favour of plaintiff/appellant no.1 who was the wife of Baijnath, son of Mahadev Prasad. The probate of the Will was also stated to have been obtained. The Appellants challenged the validity of the sale deed dated 19.12.1950 purported to have been executed by Ajuddhibai in favour of defendant no.3-Rukmani Bai and sale deed dated 1.2.1962 executed by Rukmani Bai in favour of deceased Nandram-defendant no.1 and deceased Kashiram-defendant no.2 and alleged that defendant nos.1 and 2 were thus in illegal possession of the suit property. The

defendants Nandram and Kashiram denied the averments made in the plaint and contended that they had legally obtained the title of the suit property vide sale deed dated 1.2.1962 though one Ram Singh who was the sub-tenant of Ajuddhibai.

4. The trial court held that the Will in favour of plaintiff/appellant no. 1 was proved and that she had become successor of Ajuddhibai through probate. The sale deeds dated 19.12.1950 in favour of Rukmani Bai were held to be not proved in view of the contradictory statements made by the defendants' witnesses, the failure of the defendant no.3 to attend court and prove the sale deeds, the absence of the signatures of Ajuddhibai on the sale deeds, the failure to mutate the suit property in their names and as Ajuddhibai was in Vrindavan and not in Gwalior as alleged at the time of execution of the sale deeds. Ram Singh was noted to have been in possession of the suit property till his death in 1956 and the defendants were held to have not acquired title by

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adverse possession as the suit was filed in 1964. The defendants Nandram and Kashiram were held to have not acquired any title over the suit property. Hence, the suit was allowed and the defendants were directed to hand over possession of the suit property to the plaintiff-appellant.

5. Aggrieved by the judgment of the trial court, the defendant nos.1 and 2 preferred an appeal before the District Court, which upheld the findings of the trial court and dismissed their appeal.

6. The defendants then assailed the judgment of the District Court by preferring second appeal in the High Court, which was eventually allowed. However, in the challenge made before the Supreme Court by way of appeal by special leave, the Apex Court set aside the order of the High Court and remitted the matter back with directions to the High Court to first frame questions of law, if any, and then proceed with the matter and decide the same in accordance with law.

7. On remand, the High Court formulated substantial questions of law and then heard the learned counsel appearing for both the parties and passed the impugned judgment. The High Court held that the suit was within the period of limitation as the lower courts have recorded concurrent findings as to the exclusive possession of one Ram Singh till his death in 1956. On the third issue, the High Court held that there is a concurrent finding of both the trial court and appellate court that the documents were forged, based on the evidence of the handwriting expert and the depositions of the witnesses who had stated that Ajuddhibai was residing at Vrindavan and not at Gwalior when the document was executed. The genuineness of the Will was also upheld as concurrent factual findings to the effect were not liable to be interfered with.

8. On the second issue as to whether appellant no.1 would be a successor to Ajuddhibai, learned Single Judge of the High Court observed that Sections 164 and 165 of the M.P.

Land Revenue Code (hereinafter referred to as the 'Code'), which dealt with devolution of interest of a bhumiswamy and transfer of rights respectively were amended on 8.12.1961. Since Ajuddhibai had died before the amendment, the unamended sections were held to be applicable. The unamended Section 165 was noted to be barring a bhumiswamy from transferring her interest through a Will and Ajuddhibai was thus held to have had no right to execute a Will. Learned Single Judge also rejected the contention that defendant no.3 was a successor under section 164(2)(b) as Ajuddhibai had not inherited the suit property from her husband or father-in-law rather from Sumitra i.e. her mother-in-law. The defendant no.3 was further held to have not been the nearest surviving heir of the husband of Ajuddhibai especially when Baijnath, son of Mahadev Prasad and the husband of the Appellant no.1, was alive.

9. As noticed above the second appeal was remanded to the High Court with a direction to formulate substantial question of law and then decide the appeal afresh. Pursuant to the

aforesaid order the High Court formulated the following substantial questions of law:-

> "(1) Whether the suit filed by the plaintiff on 29.4.64 challenging the registered as to deeds executed on 19.12.1950 can be said to be within limitation in view of Section 3 of the Transfer of Property Act?
>
> (2) Whether Ramkali is entitled to succeed the suit property left behind by Ayodhyabai under Section 164 of the M.P. Revenue Code?
>
> (3) Whether the findings arrived at by the two courts below that the documents Exs. D/2 and D2A are forged, is only based on the expert opinion and not supported by any legal evidence on record?"

10. Answering the first question, the High Court held that the suit cannot be dismissed as barred by limitation. Answering question no.3, the High Court further came to the conclusion that the two courts below have concurrently found that the Will Ex. P.1 is a genuine document which is a finding of fact and cannot be interfered with.

11. On the question as to whether Ramkali is entitled to succeed the suit property left behind by Ajuddhibai, the High Court, after referring Section 164 of the M.P. Land Revenue Code, came to the conclusion that Ajuddhibai had no right to execute the will in respect of agricultural land prior to

amendment of Section 164 of the Code. The High Court further rejected the contention made by the defendant-respondent that Rukmani Bai was the nearest surviving heir of the husband of Ajuddhibai and that she would be entitled to succeed to her property. The Court held:-

> "The argument is without any force because the plaintiff can succeed only if Ajudhibai had inherited the property from her husband or her father-in-law. In the present case Ajudhibai has not inherited property from her husband or father-in-law. In fact, she has inherited the property from Sumitra, her mother-in-law. Moreover, from the record it appears that on the date of filing of the suit Baijnath, husband of Ramkalidevi was alive. Baijnath was the son of Mahadev Prasad who is the son of Hardayal. In such circumstances Ramkalidevi cannot succeed the property left behind of Ajudhibai in view of section 164 of the M.P. Land Revenue Code as she was not the nearest surviving heir of the husband of Ajudhibai."

12. The second substantial question of law is as to whether or not Ramkali is entitled to succeed to the suit property left behind by Ajuddhibai (Ayodyabai) under section 164 of the M.P. Land Revenue Code. Ajuddhibai executed the Will dated 21.01.1961 in respect of an agricultural land, i.e., suit property in favour of Ramkali Devi. The suit property was then governed by the Madhya Bharat Land Revenue and

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Tenancy Act. The devolution of interest of a Bhumidar and transfer of rights by Bhumidar was governed by Section 164 and 165 of the Code respectively. Amendment was incorporated in these provisions on 8.12.1961, whereas Ajuddhibai died prior to the amendment. Therefore, the legality of the Will shall be governed by unamended Section 164 of the Code. Section 164 of the Code, as it stood before its amendment in 1961, provided for the order in which the devolution of the rights of a Bhumiswami would take place after his death. The Hindu Succession Act, 1956 had already come into force when Section 164 was enacted.

13. However, this Section was amended by the M.P. Land Revenue Code (Amendment) Act No.38 of 1961 which came into force with effect from 8.12.1961 and the personal law was made applicable to devolution of Bhumiswami rights and property of the Bhumiswami after his death was to pass by inheritance, survivorship or bequest, as the case may be.

14. Transfer of interest of Bhumiswami in his land otherwise than by Will subject to Section 164 was dealt with by the

unamended Section 165 of the Code. However, the words "otherwise than by will" was deleted by the amendment dated 8.12.1961 and the words "bequest" was added in Section 164. Therefore, the right of Bhumiswami to transfer his land by way of a Will was not recognized by law when Ajuddhibai executed the Will dated 21.1.1961. She had no right to execute the same prior to amendment of Section 164 of the Code. Property could only be devolved in the order of succession as mentioned in Section 164. Thus, the question of proving genuineness of the Will need not be considered.

15. However, the claim of Ramkali Devi does not stand valid in view of the unamended Section 164 of the Code as she was not the nearest surviving heir of the husband of Ajuddhibai since her husband (son of the brother-in-law of Ajuddhibai's father-in-law) was alive on the date of filing the suit by Ramkali.

16. The question referred for consideration to the Full Bench of the Madhya Pradesh High Court in the case of ***Nahar Hirasingh and Ors. vs. Dukalhin and Ors.***, AIR 1974 MP

141, was whether the provision for succession of Bhumiswami rights under Section 164 of the Madhya Pradesh Land Revenue Code, 1959 as it stood before its amendment in 1961, was a valid provision or it was ultra vires in view of Section 4 of the Hindu Succession Act, 1956. The Court held it to be a valid provision. It was also observed that the M.P. Land Revenue Code, 1954, as also the M.P. Land Revenue Code, 1959, had received the assent of the President, and therefore, by virtue of Sub-clause (2) of Article 254 of the Constitution, that law would prevail in the State of Madhya Pradesh as against any provisions of the Hindu Succession Act, 1956. However, the matter would be different when the M.P. Land Revenue Code, 1959, after amendment of Section 164 by the M.P. Land Revenue Code (Amendment) Act, 1961, made the personal law of the parties applicable to devolution to agricultural properties. Upon such amendment, the personal law as amended from time to time would be applicable.

17. The application for amendment of plaint filed by appellant no.1 to make appellant nos. 2 to 5 fall under Class

XVII of the Madhya Pradesh Land Revenue Code was rejected by learned Single Judge of the High Court on the ground that the same would change the nature of the suit which was filed 40 years ago, as the claim was made solely on the basis of Will and not on the basis of inheritance. The High Court allowed the appeal vide the impugned judgment as the appellants had no locus standi to file the suit as Ajuddhibai could not have transferred her interest through a Will. Hence, present appeal by special leave by the plaintiffs.

18. While rejecting the amendment petition, the High Court observed as under:

> "16. During the course of hearing an application is filed by the respondents under Order 6 Rule 17 CPC for amendment to the effect that the respondents Dinesh, Satish, Sanjay and Rajendra fails under Class XVII of the Madhya Pradesh Land Revenue Code. This amendment, at this stage, in fact cannot be allowed because the same is going to totally change the nature of the suit. The suit is filed in the year 1964 the suit was filed on the premises that Ramkali Devi has inherited the property from Ajudhibai on the basis of will. By the amendment in the pleadings Dinesh, Satish, Sanjay and Rajendra have joined as party. That amendment was incorporated on 18.7.1994 and their names were added as plaintiffs in the suit. In the cause title also the word 'plaintiff' is substituted by the word 'plaintiff'. However, there is no amendment in the averments made in the rest of the pleadings in the plaint. In such circumstances, now, it will not be in the interest of justice to allow the application for

> amendment which totally goes to change the premises of the suit after a lapse of more than 40 years. In the present case the plaintiffs have based their title solely on the basis of a will executed by Ajudhibai and, therefore, allowing an application for amendment making claim on the basis of inheritance that too through Hardayal cannot be permitted at this stage. Hence, the amendment application is rejected."

19. It appears thus while disposing of the appeal, the High Court has not gone into the amended plaint. By amendment, the plaintiff-appellant not only sought to add the names of Dinesh, Satish, Sanjay and Rajendra sons of Baijnath Prasad Saxena in the category of plaintiffs, but also sought to make necessary amendment in paragraph 3 of the plaint. The averment sought to be incorporated in paragraph 3 of the plaint by amendment is reproduced hereunder:

> *"Vikalp me yadi vasiyatnama vaidya na mana jave to be Ajudhibai ke karibtar varies vadini ke ladke Rajendra, Dinesh, Satish aur Sanjay hi hai jo abhi nabalig hai aur yeha dava unke hito ko represent karte huai unki maliki ke adhar par bhi prastut hai. Vadini ke dekh-rekh me ladke rahte hai. Garj yahe hai ki har halat me prativadigan ki koi swatva v mukable vadini avam uske ladke nahi hai. Aur vadini vivadagrast aaraji ka kabja apne tatha ladkon ko aur se pane ki patra hai."*
>
> As translated in English
> "In alternative, if the will is not held valid, yet the plaintiff's sons Rajendra, Dinesh, Satish, Sanjay, who at present are minors are near relations of Ajudhibai and this suit is submitted to represent their interests

> on basis of their ownership. The sons live in care of plaintiff meaning thereby in every condition there is no right of defendants competing plaintiff. And the plaintiff herself and on behalf of her sons is entitled to get possession of the suit land."

20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction 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 malafide 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 paragraph 3 of the original plaint, the High Court ought not to have rejected the application.

22. In the case of ***Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon***, AIR 1969 SC 1267, this Court held that the power to grant amendment to pleadings is

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intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

23. In ***Pandit Ishwardas vs. State of Madhya Pradesh and Ors.***, AIR 1979 SC 551, this Court observed :-

> "We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no legal basis for this assumption. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court."

24. In the light of the discussion made hereinabove and also having regard to the fact that the amendment sought for by the plaintiff-appellant ought to have been allowed by the High

Court, in our considered opinion substantial issue no.2, as formulated by the High Court, needs to be decided by the High Court afresh.

25. We, therefore, allow the appeal in part, affirm the finding recorded by the High Court on substantial question no. 1 and 3. However, the finding recorded by the High Court in the impugned judgment on substantial question no.2 is set aside and the matter is remitted back to the High Court to decide the aforementioned substantial question no.2 afresh, taking into consideration the relief sought for by the plaintiff-appellant by amending the plaint.

.....J.
(M.Y. Eqbal)

.....J.
(Amitava Roy)

New Delhi
May 14, 2015

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