

RADHIKA DEVI
v.
BAJRANGI SINGH AND ORS.

JANUARY 18, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Code of Civil Procedure 1908 :

Order 6 Rule 17—Amendment of plaint—Party acquires right by bar of limitation—If it is sought to be taken away by amendment of the pleading, such amendment should be refused.

Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala, [1964] 2 SCR 567, held applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2719 of 1996.

From the Judgment and Order dated 13.8.93 of the Patna High Court in C.R. No. 1657 of 1992.

S.K. Sinha for the Appellant.

S.B. Sanyal, Anil K. Jha and Mrs. Alka Jha for the Respondents.

The following Order of the Court was delivered :

We have heard learned counsel for both sides.

Leave granted.

The appellant has instituted Partition Suit No. 24/88 in the Court of Subordinate Judge, Aurangabad for partition of certain properties. Respondents 16 to 20 herein filed written statement on June 15, 1988 wherein they pleaded that Ramdeo Singh had executed and registered a gift deed in their favour on July 28, 1978 bequeathing the properties covered thereunder. They became owners of those lands and the appellant is bound by the same. Pending the suit, the appellant filed an application under Order 6 Rule 17, CPC on November 11, 1992 seeking declaration that the gift deed was obtained by the respondents illegally and fraudulently

and, therefore, it was ineffective and does not bind the appellant. Though the trial Court by order dated November 24, 1992 allowed the petition, the High Court in Revision No. 1657/92 by order dated August 13, 1993 allowed the petition and set aside the order directing amendment of the plaint. Thus, this appeal by special leave.

Shri S.K. Sinha, learned counsel for the appellant has contended that the appellant had no knowledge of the execution of the gift deed by Ramdeo Singh and by the amendment of the plaint, the appellant is not defeating the right of the respondents but is merely seeking to avoid the gift deed executed which was detrimental to appellant's right, title and interest in the property. Therefore, the amendment does not alter either the character of the suit or the nature and the relief already sought, viz., partition of the property. Shri Sanyal, the learned senior counsel for the respondents, contended that the appellants had lost the right to seek the above declaration as being barred by limitation. The registration of the document is a notice to everyone claiming any right, title and interest therein; even otherwise, the respondents in the written statement filed on June 15, 1988 has specifically pleaded about the gift being made by Ramdeo Singh in their favour. Despite that, the appellant had not taken any steps till November 1992 by which time even the suit for declaration within the limitation of three years from the date of knowledge had got time-barred. Therefore, the appellant is not entitled to amend the plaint which would prejudicially affect the rights of the respondents.

We find no force in the contention of the appellant. No doubt, the amendment of the plaint is normally granted and only in exceptional cases where the accrued rights are taken away by amendment of the pleading, the Court would refuse the amendment. This Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala*, [(1964) 2 SCR 567 at 582] held thus :

"It is, no doubt, true that, save in exceptional cases, leave to amend under 0.6, r.17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading

and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is a *fortiori* so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed."

In that case this Court considered the cross-objections to be treated as a cross suit since no alteration was being made in the written statement to treat it was a plaint originally instituted. The amendment which was sought to be made was treated to be clarificatory and, therefore, this Court had upheld the amendment of the written statement and treated it to be a cross suit. The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.

The appeal is accordingly dismissed but without costs.

Appeal dismissed.