

Baldev Raj v. Mohan Lal (S. S. Sodhi, J.)

H.S.B.

Before S. S. Sodhi, J.

BALDEV RAJ,—Petitioners.

versus

MOHAN LAL,—Respondent.

Civil Revision No. 1471 of 1983.

April 18, 1984.

Code of Civil Procedure (V of 1908)—Order 6 Rule 17 and Order 20 Rule 15—Suit for dissolution of partnership and rendition of accounts—Preliminary decree passed—Parties thereafter arriving at a compromise—Application for amendment of written statement to plead the compromise—Amendment after passing of the preliminary decree—Whether permissible.

(3) 1979 P.L.R. 641.

Held, that it is well settled that the Court is indeed competent to take note of events subsequent to the passing of the preliminary decree effecting the rights and position of the parties to the property in suit and the Court taking into account the altered situation can, if necessary, pass a further preliminary decree. Since passing of the preliminary decree in a suit for dissolution of partnership and rendition of accounts is but a step in a pending suit, the suit continues until the final decree is passed and, therefore, the pleadings can be amended even after passing of the preliminary decree.

(Paras 4 and 6).

Petition under 115 C.P.C. for the revision of the order of the Court of Shri P. S. Bajaj, P.C.S. Sub-Judge 1st Class, Jalandhar, dated 18th April, 1983, dismissing the application.

V. K. Jhanji, Advocate, for the Petitioner.

M. L. Sarin, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) Amendment of the written statement, is it competent after the passing of the preliminary decree for dissolution of partnership and rendition of accounts? Herein lies the controversy raised.

(2) What happened here was that after the passing of the preliminary decree on May 8, 1979, the Court ordered the appointment of a Receiver. This was done on June 6, 1980 on the application of the decree-holder Mohan Lal. This order was challenged in appeal by the defendant Baldev Raj. Baldev Raj died during the pendency of this appeal. After his legal representatives had been impleaded, a compromise is said to have been arrived at between the parties in terms of which, the shop in dispute came to Sonu, the minor son of Baldev Raj. There is on record, a copy of the order of the District Judge, Jalandhar of September 4, 1980, the operative part of which reads as under :—

“Mohan Lal respondent has made a statement that he has surrendered his share in the shop in dispute in favour of

Baldev Raj v. Mohan Lal (S. S. Sodhi, J.)

Sonu, the minor son of Baldev Raj, appellant since deceased while Prem Lata on behalf of herself and on behalf of her minor children has also made statement praying for the withdrawal of the appeal on the basis of the said compromise."

The appeal was on this account allowed to be withdrawn.

(3) The defendants then sought amendment of the written statement seeking thereby to plead the compromise referred to above. The Trial Court disallowed it on the wholly untenable premises that the preliminary decree had become final and thus operated as *res judicata* between the parties and therefore, no amendment could be allowed which would effect the basis of the preliminary decree or the rights of the plaintiff Mohan Lal, thereunder.

(4) It is now well settled that the Court is indeed competent to take note of events subsequent to the passing of the preliminary decree effecting the rights and position of the parties to the property in suit and the Court taking into account the altered situation can, if necessary, pass a further preliminary decree. In *R. Subramania Iyer and others v. Thengammal*, (1) a compromise was said to have been arrived at between the parties after the passing of the preliminary decree. It was held that the Court could take this compromise into consideration and pass a fresh preliminary decree. In this behalf, it was observed, "the Court is competent to take into account the matters set out in the compromise, if the compromise is found to be genuine and binding on the parties and the Court is entitled to embody it in a set of fresh directions for the purpose of passing a final decree, and the directions so issued should be construed as not an amendment to the preliminary decree already passed, but rather as a fresh preliminary decree, which it is open to the Court, dealing with a partition suit to pass at any time till the stage of passing the final decree is over." As the compromise had been questioned on the grounds of deceit and misrepresentation, the Trial Court was directed to deal with the matter relating to the validity of the compromise and the necessity to pass a revised preliminary decree in accordance therewith, if its validity was established.

(1) A.I.R. 1965 Madras 305.

(5) The Supreme Court has also expressed the view that a second preliminary decree can be passed. In *Phool Chand and another v. Gopal Lal*, (2) the parents of the plaintiff died after the passing of the preliminary decree thereby changing the shares of the plaintiff and the defendants in the property in suit. The Trial Court taking note of this fact redistributed the shares of the parties as indicated in the preliminary decree. In dealing with the contention that there could not be two preliminary decrees, it was held that even after the preliminary decree has been passed if some member of the family, to whom an allotment was made in the preliminary decree, thereafter dies, the Court has jurisdiction to amend the shares suitably by passing a second preliminary decree. In this behalf it was observed, "if an event transpires after a preliminary decree which necessitates a change in shares, the Court can and should do so and if there is dispute in that behalf, the order of the Court deciding that dispute and making variations in shares specified in the preliminary decree, already passed, is a decree in itself which would be liable to appeal."

(6) As regards amendment of pleadings after the passing of a preliminary decree, a direct authority is provided by the judgment of the High Court of Patna in *Awadhendra Prasad Narayan Singh and others v. Raghubansmani Prasad Narayan Singh and others*, (3) where it was held that since passing of the preliminary decree in a suit for partition is but a step in a pending suit, the suit continues until the final decree is passed and therefore, the plaint can be amended even after the passing of the preliminary decree.

(7) The weight of authority thus, clearly supports the point canvassed by Mr. V. K. Jhanji, counsel for the petitioner that the application for amendment of the written statement was maintainable even after the passing of the preliminary decree.

(8) In holding a view to the contrary, the Trial Court had relied upon two authorities which are really not applicable here. In *R. Sambandam v. G. Chidambaram Pillai and others*, (4) the defendant had been proceeded *ex parte*. The preliminary decree

(2) A.I.R. 1967 S.C. 1470.

(3) A.I.R. 1979 Patna 50.

(4) 1983 M.L.J. 178.

for partition passed in that case, directed the removal of the super-structure on a plot and the allotment of that plot to one of the parties. When the plaintiff moved for passing of the final decree, the defendant, who had been proceeded *ex-parte*, applied for allotment of that plot as also the super-structure thereon. It was held that as no appeal had been filed by the defendant against the preliminary decree, the decree had become final and unless it was altered or modified in appeal, no change could be made therein by the Trial Court. These circumstances bear no resemblance to the case in hand.

(9) The other case relied upon was *Jagojoti Bose and another v. Bararuchi Bose and others*, (5). This was a suit for partition, where the plaintiff claimed one third share in the property in dispute. The defendants set up a will in terms of which the plaintiff had no right in the property in suit. A preliminary decree was passed, holding the plaintiff and the defendants entitled to one third share each. After the passing of this decree probate was granted of the will set up by the defendants under which the plaintiff had no right. When the plaintiff sought a final decree on the basis of the preliminary decree, the defendants sought to defeat his claim by setting up the probate of the will. It was held that the jural relationship of the parties stood finally settled by the preliminary decree. The defendants having taken a defence based upon the will, their claim now on the basis of the probate was barred by *res judicata* actual and constructive. This case too is clearly distinguishable from the facts of the present case.

(10) In the circumstances as emerge in the present case, there is no escape from the conclusion that an application for amendment of the written statement was indeed competent and further there are ample and valid reasons for allowing it. The defendants are accordingly permitted to amend their written statement as prayed for.

(11) In allowing the amendment of the written statement, it is, however, specifically clarified that it shall be open to the plaintiff to raise any objection or pleas as he may deem appropriate in seeking to contest the validity and genuineness of the compromise pleaded.

(12) This Revision Petition is accordingly hereby accepted. Costs of this petition shall be costs in the suit. Counsel's fee Rs. 200.

N.K.S.