

Sucha Singh and another v. Chanan Singh and others
(M. R. Agnihotri, J.)

treated as an application for review of the order dated January 17, 1985, would be barred by time. As no application under section 5 of the Limitation Act has been filed for condoning the delay, the application would not be maintainable. However, this does not preclude us for treating this application as an application for correcting the error in the judgment of the learned Single Judge dated August 27, 1984, and we treat it accordingly.

(13) It was suggested that in view of the order dated January 17, 1985, passed in the letters patent appeal, the judgment of the learned Single Judge dated August 27, 1984, has merged in the judgment of the letters patent appeal, and as such, no question of amending or correcting the judgment dated August 27, 1984, arises. In our opinion, where an appeal against a judgment is dismissed summarily, it cannot be said that the judgment merges in the order passed by the appellate Bench. In this view of the matter, we see no impediment in our way in correcting the judgment of the learned Single Judge dated August 27, 1984.

(14) In the result, this application succeeds and is allowed. The judgment of the learned Single Judge dated August 27, 1984 is amended to the extent that on the enhanced amount of compensation as determined by him, the applicants would be entitled to 30 per cent instead of 15 per cent solatium under the amended section 23(2) as also to the interest calculated at the rate of 9 per cent per annum for one year and thereafter at the rate of 15 per cent per annum from the date on which possession of the land was taken to the date of payment of such excess in accordance with the amended section 28 of the Land Acquisition Act.

R.N.R.

Before M. R. Agnihotri, J.

SUCHA SINGH AND ANOTHER,—Petitioners.

versus

CHANAN SINGH AND OTHERS,—Respondents.

Civil Revision No. 2750 of 1986.

January 5, 1988.

Code of Civil Procedure (V of 1908)—Order 6, Rule 17—
Amendment of written statement—Scope of—Power to permit
amendment—Grounds of amendment.

Held, that the object underlying Order 6, Rule 17 of the Code of Civil Procedure, 1908 is obviously to avoid multiplicity of litigation and if the object can be achieved by making an amendment in the pleadings in the suit which is already in progress, the Courts should be liberal in permitting the necessary amendments sought to be made, instead of leaving them to file separate suits subsequently, especially when the other side can be adequately compensated by awarding costs. (Para 5).

Petition under section 115 of the Civil Procedure Code for the revision of the order of the Court of Shri B. C. Gupta, PCS, Sub Judge, Nawanshahr dated 18th September, 1986 allowing the amendment of written statement subject to payment of costs of Rs. 375 to compensate the plaintiff for the negligence of the defendant.

Sarwan Singh, Advocate with R. A. Sheoran, Advocate, for the defendant.

J. R. Mittal, Advocate, for the Respondents.

JUDGMENT

M. R. Agnihotri, J.

This revision petition has been filed against the order dated 18th September, 1986, passed by the learned Subordinate Judge 1st Class, Nawanshahr, by which amendment of the written statement was allowed subject to payment of costs of Rs. 375 to compensate the plaintiff-petitioners. The present suit was filed by the plaintiffs for declaration to the effect that they were co-sharers to the extent of 2/10 share in the tubewell fitted with three horse power electric motor, with consequential relief of permanent injunction.

(2) The written statement was filed on the basis of which the suit proceeded. Later on, defendant No. 1 submitted an application seeking permission to amend the written statement stating that on 12th August, 1986, defendant No. 1 came to know that some forgery had been committed in the registered deed dated 18th May, 1977 (Exhibit P. 2), submitted by the plaintiffs. It was stated that the suit of the plaintiffs was based on the sale-deed itself by virtue of which they claimed to have acquired the right to the water-course from the said tubewell to the suit land and the document, Exhibit P.2, had been mutilated and altered with certain additions made therein in order to mislead the Court.

(3) The application was opposed on the ground that if the written statement was allowed to be amended at that stage, it

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would prejudice the case of the plaintiffs which could not be compensated by costs and further that the proposed amendment would deprive the plaintiffs of the advantage which had accrued to them by the admission made by defendant No. 1 in the written statement.

(4) The learned Subordinate Judge allowed the written statement to be amended by permitting defendant No. 1 to add the following preliminary objection:—

“That the sale deed dated 18th May, 1977 executed by Gurmej Singh in favour of Harjinder Singh etc. Exhibit P.2 is bogus, altered and Hissa Motor has been added to afterwards.”

It is this order of the learned Subordinate Judge which is under challenge in this revision petition.

(5) After hearing the learned counsel for the parties, I am of the considered view that the discretion has been rightly exercised by the learned Subordinate Judge by permitting the amendment to be made in the written statement. It is the consistent view of the Supreme Court as well as of this Court that howsoever negligent or careless may have been the first omission had howsoever late the proposed amendment, the amendment in the pleadings should be allowed if it can be made without causing injustice to the other side. The plaintiff may add a new cause of action and the defendant may add a new defence even by introducing a new case by taking into consideration subsequent events. The object underlying Order 6, Rule 17 of the Code of Civil Procedure, is obviously to avoid multiplicity of litigation and if the object can be achieved by making an amendment in the pleadings in the suit which is already in progress, the Courts should be liberal in permitting the necessary amendment sought to be made instead of leaving them to file separate suits subsequently, especially when the other side can be adequately compensated by awarding costs. In the present case, the learned Subordinate Judge has allowed the amendment to the written statement subject to payment of costs of Rs. 375 which, in my view, is sufficient compensation to the plaintiffs.

(6) Accordingly, the revision petition is dismissed with no order as to costs. The parties, through their counsel, are directed to appear before the Subordinate Judge Ist Class, Nawanshahar, on 8th February, 1988.

S.C.K.