

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6685 OF 2001

MAHAVIR PRASAD AND ANR.APPELLANT(S)

Vs.

RATAN LAL AND ANR.RESPONDENT(S)

J U D G M E N T

HARJIT SINGH BEDI, J.

1. This appeal is directed against the judgment of the Single Bench of the Rajasthan High Court dated 13th December 2000 whereby the order of the Civil Judge, Senior Division, Sikar dated 24th October 2000 dismissing the application under Order 6 Rule 17 of the CPC seeking to amend the plaint, has been reversed. The facts are as under:

2. On 10th October 1974, one Bhanwarlal son of Gulab Chand, the brother of the respondent herein Ratan Lal, created a trust styled as Shri Gulabchand Bhanwarlal Sethi Smriti Nidhi Pranyas Trust. The trust deed was duly

registered with the Sub-Registrar, Sikar on the same day. On 27th January 1976, Ratan Lal filed a suit for partition and declaration against the trustees with respect to the property which formed a part of the trust. The Civil Judge, Senior Division framed the requisite issues on 19th August 1977 and after trial a preliminary decree was passed on 25th May 1979 holding that Ratan Lal was entitled to a half share in the property and was therefore entitled to a partition by separate possession by metes and bounds. No appeal was preferred against this decree by either party. Four of the six trustees thereafter passed away and the remaining two trustees, the appellants herein, moved an application on 27th March 1999 for the passing of the final decree. Ratan Lal at this stage moved an application dated 28th August 2000 under Order 6 Rule 17 for amendment of the plaint now claiming the ownership of the entire trust property, inter alia, on the ground that the property was a joint family property consisting of himself and his brother, the deceased defendant no.1 Bhanwarlal, and alleging that Bhanwarlal had not created the trust as he had abandoned the idea of doing so and he (Ratan

Lal) as sole heir, was thus, entitled to a decree for the entire property. The appellant filed a reply dated 13th September 2000 to the said application taking several pleas. As already mentioned above, the amendment application was dismissed by the Civil Judge vide order dated 24th October 2000 and the said order has been set aside by the High Court vide the impugned order dated 13th December 2000 and a direction has been issued that the amendment should be allowed in the preliminary decree so that the matter may be finally determined when the final decree is prepared. It is against this order that the present appeal has been filed.

3. Mr. Mridul, the learned counsel for the appellant, has argued that the order of the High Court was based on a misconception as the prayer in the application under Order 6 Rule 17 was for an amendment to the plaint and not for an amendment to the preliminary decree and as such the very basis of the order was erroneous as to the relief claimed. He has also pleaded that the application filed about 20 years after the preliminary decree had been passed was highly belated and ought to have been dismissed on that very short ground.

He has finally submitted that the finding of the trial court which had not been reversed by the High Court, was that a new case was sought to be put up by the amendment which was not permissible under law.

4. Mr. Jain, the learned counsel appearing for the respondent has at the very outset pointed out that the order of the High Court in so far as it had allowed the amendment of the preliminary decree was erroneous as by the application under Order 6 Rule 17 an amendment in the plaint had been prayed for in the background of the fact that Bhanwarlal had abandoned the idea of creating the trust and in that view of the matter the respondent being his sole heir was entitled to succeed to the entire property. He had also submitted that as the plaint, as originally laid, had claimed reliefs in accordance with the proposed amendment the mere fact that some additional facts in support of those prayers were now being brought on record would not amount to a change in the nature of the suit and that in any case if the amendment was to be disallowed the respondent would have to go in for another suit which would lead to multiplicity of proceedings.

5. We have considered the arguments advanced by the learned counsel for the parties. In view of Mr. Jain's statement that it was the amendment of the plaint and not the amendment of the preliminary decree that had been prayed for, the very basis of the High Court's order disappears and the order of the trial court dismissing the application must ipso facto be restored. We have, however, chosen to go into other aspects of the matter. Concededly, the preliminary decree had been passed on 25th May 1979 and this decree had attained finality. It is also significant that Bhanwarlal, the creator of the trust, who is said to have later abandoned the idea of creating the trust was the event which had led Ratan Lal to claim the entire suit property had died on 18th November 1982 whereas the application for amendment had been filed on 28th August 2000. We are, therefore, of the opinion that the application is highly belated both from the date of the preliminary decree which is 25th May 1979 and from the date of death of Bhanwarlal which is 8th November 1982 and for these additional reasons the application must be rejected.

6. The learned counsel for the appellant has also submitted that by the proposed amendment the very nature of the suit was sought to be changed. Mr. Jain, for the respondent has however expressed his apprehension that in case some finding was recorded on this issue, it might prejudice his client's case at some later stage. In the background and in the above facts and without expressing any opinion on this matter either way, we leave this question untouched. The order of the High Court dated 13th December 2000 is accordingly set aside and the order of the Civil Judge restored. Ipso facto, the application for amendment dated 28th August 2000 is dismissed. There will be no order as to costs.

.....**J.**
(DALVEER BHANDARI)

.....**J.**
(HARJIT SINGH BEDI)

New Delhi,
Dated: May 14, 2009