95
Supplementary

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CM(M) No. 141/2024
Caveat No. 300/2024

1. Ali Mohammad Rather, Aged 65 years
2. Gh. Hussain Rather, Aged 72 years
3. Gh. Hassan Rather, Aged 53 years
   Sons of Mohammad Rather
   Residents of Reshipora, Budgam.

….. Petitioner (s)

Through: Mr. Mohammad Ashraf Wani, Adv.

V/s

1. Mohammad Yaseen Ganaie
2. Ghulam Rasool Ganaie
3. Mohammad Ahraf Ganaie
   Sons of Mosa Ganaie
   Residents of Reshipora, Budgam.

….. Respondent(s)

Through: Ms. Asma Rashid, Adv.

Coram:

Hon'ble Mr. Justice Puneet Gupta, Judge.

ORDER

08.05.2024

1. The petitioners herein are the defendants in suit filed by the respondents-plaintiffs and is pending disposal before the court of Principal District Judge, Budgam. During the pendency of the suit, the respondents/plaintiffs filed an application for amendment of the suit. The application of the plaintiffs was allowed vide order dated 20.02.2024 by the court of Principal District Judge, Budgam. The said order has been challenged before this court on the ground that the

decree passed in the year 1992 by the court of Sub Judge, Budgam could not be the subject matter of the suit filed by the respondents.

2. With the appearance of Ms. Asma Rashid, Advocate caveat as lodged on behalf of the respondents shall stand discharged. The counsel accepts notice in the petition.

3. Learned counsel for the petitioners submit that the amendment could not be allowed whereby the plaintiffs have allowed to challenge the decree passed in the year 1992 in the present suit as the same changes the very nature of the suit. It is also contended that the judgment and decree is being challenged by the plaintiffs through the medium of amendment application though it is barred by limitation as on date when the application was moved for amendment of the suit.

4. Learned counsel for the respondents- plaintiffs has argued that the plaintiffs were not aware of the passing of the decree of 1992 and therefore the plaintiffs had every reason to seek relief of setting aside of the judgment and decree which was obtained on fraud. The amendment as allowed by the trial court is not to change the basic nature of the suit and has been rightly allowed by the trial court.

5. The suit in hand is instituted by the plaintiffs with the prayer declaring them to be lawful owners of the land which is the subject matter of the suit and further that the defendants are in illegal possession of one part of the suit property. It is further prayed in the suit that the defendants be restrained from interfering with the suit property in any manner

and that be directed to hand over the portion of the property to the plaintiffs which is in possession of the defendants.

6. In the suit which was decreed on 04.05.1992, the defendants were restrained from interfering and disturbing the peaceful possession of the plaintiffs. The judgment and decree passed in favour of the defendants had created rights in their favour though the plaintiffs in the present suit may not be party to the decree. The father of the plaintiffs was, however, defendant in the suit decreed in the year 1992. The decree passed in the year 1992 obtained finality on the expiry of the limitation period unless it gets nullified in any subsequent proceedings if permitted by law. It is not disputed that the same was not earlier challenged. The plaintiffs could not be allowed to amend the suit so as to challenge the decree passed in favour of the defendants in the pending suit. The rights which had accrued to the plaintiffs in their favour by virtue of decree passed in the year 1992 could not be challenged in the suit in hand merely on the ground that the plaintiffs in the present suit had come to know of the passing of the decree only during pendency of the suit. The remedy, if any, to the plaintiffs was to file separate proceedings if countenanced by law. It is not that application filed for amendment of the plaint has to be allowed just to avoid multiplicity of suits. Every case have its own facts and merits which are required to be considered

while allowing or rejecting the application filed for amendment of the plaint.

7. The argument thus raised by the counsel for the respondents herein that they came to know about passing of the judgment and decree of 1992 only during currency of the suit and therefore should be allowed to challenge the same in the present suit is a plea which cannot be allowed.

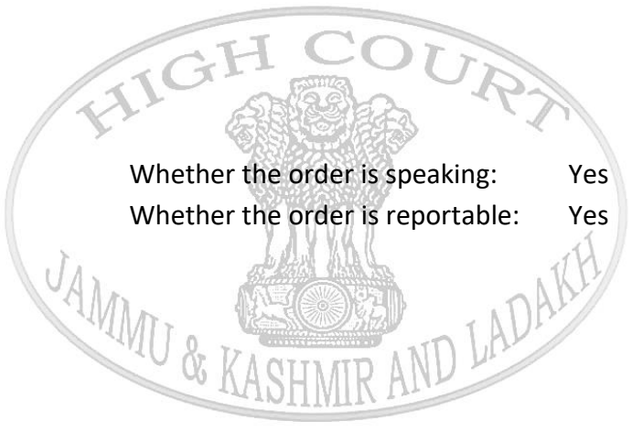
8. The judgment referred to by learned counsel for the petitioners herein in case titled ***Basavaraj Vs. Indira and Ors.,*** **(Civil Appeal No. 2886 of 2012)** decided on 29.02.2024 by the Hon'ble Supreme Court does not strictly apply to the present case, as in that case the Apex Court did not allow the amendment to the plaint on the basis that compromise decree was sought to be challenged after the limitation period.

9. No doubt the court can allow the application for amendment of the pleadings in terms of the Order VI Rule 17 of CPC at any stage of the proceedings. However, the same cannot be allowed by the court unless there are reasonable grounds for allowing the application. The plea raised by the plaintiffs to amend the suit on the ground mentioned in the application could not be allowed by the trial court in the facts and circumstances of the case.

10. In view of the discussion made above, the present petition is allowed and the order impugned dated 20.02.2024 passed by the trial court is set aside.

(Puneet Gupta)
Judge

SRINAGAR
08.05.2024
Aasif



Whether the order is speaking: Yes
Whether the order is reportable: Yes