

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CR No. 47/2019
CM No. 7846/2019

Rajni Devi

....Appellant(s)/ Petitioner(s)

Through :- Mr. Vikas Mangotra, Advocate

V/s

State of J&K and Others

....Respondent(s)

Through :- Mr. P L Sharma, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT
31.05.2023

(Oral)

1. The petitioner has invoked supervisory jurisdiction of this court enshrined under Article 227 of the Constitution of India seeking quashment of order dated 27.09.2019 (for short **‘the impugned order’**) passed in a suit titled as **‘Rajni Devi Vs State of J&K and Others’** by the court of Sub Judge/Chief Judicial Magistrate, Jammu (for short **‘the Trial Court’**).

2. The facts emanating from the petition would reveal that the petitioner herein filed a suit against the respondents herein, seeking therein setting aside of judgment and decree dated 25.04.2016 passed in case titled as **‘Master Harshit Chib & Another Vs Rasal Singh’** by the court of 3rd Additional Munisff, Jammu. In terms of the judgment and decree passed in the said suit, the plaintiffs in the suit and respondents 3 & 4 came to be declared as sole legal heirs of one-deceased (Hardeep Singh), an employee in the police department who had died on 13.12.2015.

3. Aggrieved of the judgment and decree dated 25.04.2016 (supra), the present petitioner challenged the same in the suit (supra) whereunder the instant petition has arisen, inter-alia, on the grounds that the judgment and decree dated 25.04.2016 had been obtained by the plaintiffs fraudulently by concealing true, correct and material facts.

4. In the suit, the plaintiff present petitioner contended that she is the legally wedded second wife of the deceased-Hardeep Singh having married him on 24.07.2015 after his first wife had died on 27.11.2014, out of which wedlock, the respondents 3 & 4 herein had been born and, as such, had prayed in the suit that she is also entitled to the estate left by the deceased Hardeep Singh besides his service alongwith the respondents 3 & 4 herein, the minor children of the deceased from his first wife.

5. The private defendants/respondents herein filed their written statement to the suit, wherein it was admitted that the plaintiff/petitioner herein got married to the deceased. It came to be further stated that the petitioner/plaintiff left the house of the deceased on the next day of his Kriya Karam and started living with one-Kuldeep Singh S/o Rasal Singh R/o village Satryian Khurd Tehsil R.S Pura, thus, disentitled herself from claiming any right in the estate left behind by the deceased or a share from the service benefits of the deceased.

6. During the pendency of suit before training of issues therein, the defendants 3 to 6 /respondents herein filed an application for amendment of Paras (7) & (13) of the written statement for elaborating the same by providing that the plaintiff/petitioner herein left the house of the deceased Hardeep Singh, after the next day of his Kriya Karam and has married to Kuldeep Singh S/o

Rasal Singh R/o village Satryan Khurd Tehsil R.S Pura, being the real son of defendant 6 and that the plaintiff/petitioner upon having married the said Kuldeep Singh is living with him as his legally wedded wife, as such, not entitled to any right, title or interest in the property left behind by the deceased or any of the service benefits left by the deceased.

7. The application filed by the defendants 3 to 6/respondents herein came to be responded by the plaintiff/petitioner herein by filing objections, wherein while opposing the application, the plaintiff/petitioner stated that the amendment sought is beyond the scope of Order 6 Rule 17 CPC and that the same has been filed without any cause of action and is not maintainable and that the application has been filed as a delaying tactics in order to deprive the plaintiff of her legitimate right and that the pleadings in the suit stand admitted by the defendants, in so far as, the status of the plaintiff/petitioner is concerned.

8. The Trial Court upon considering the application in terms of the impugned order allowed the same, permitting the defendants/respondents herein to file the amended written statement within a period of 30 days on the premise that Order 6 Rule 17 CPC provides that the court may, at any stage of the proceedings, allow either party to alter or amend this pleadings in such a manner and on such terms, as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Heard learned counsel for the parties and peruse the record.

9. It is an admitted fact that the plaintiff/petitioner herein has thrown challenge to the judgment and decree earned by the respondents 3 & 4 on 25.04.2016, whereunder the said defendants 3 & 4 came to be declared as the

successors of the deceased-Hardeep Singh. It is also an admitted fact that the plaintiff/petitioner herein while questioning the said judgment and decree based her claim qua the estate and service benefits of the deceased on the ground of his being the second legally wedded wife having married the deceased on 25.07.2015, after the death of his first wife on 27.11.2014.

It is also not in dispute that though the defendants 3 & 4 in the suit filed by the petitioner herein in their written statement admitted the plaintiff/petitioner to have married the deceased after the death of his first wife, yet the defendants in the written statement simultaneously have stated that the plaintiff/petitioner herein left the house of the deceased on the very next day of the Kriya Karam and started living with one Kuldeep Singh S/o Rasal Singh. Such an averment is pleaded in Paras (7) & (13) of the written statement.

It is also not in dispute that after the filing of the said written statement, the defendants/respondents herein laid a motion for amendment of their written statement for amending Paras (7) & (13).

10. The perusal of the application for amendment and Paras (7) & (13) of the written statement would reveal that the defendants, in fact, sought to elaborate the averments in Paras (7) & (13) of the written statement by providing that the plaintiff/petitioner after leaving the house of the deceased on the next day of the Kriya Karam, joined the company of Kuldeep Singh and, in fact, married the said Kuldeep Singh and has been living with him as his legally wedded wife.

11. Before proceeding to test the validity of the impugned order, it would be advantageous and appropriate to refer to the nature, scope and object of the

provisions of Order 6 Rule 17 of the Code of Civil Procedure, which deals with **Amendment of Pleadings.**

Order 6 Rule 17 declares that the Court may, at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also provides that such amendment should be necessary for the purpose of determining the real questions in controversy between the parties. The aforesaid power of the Court however is subject to a rider put by proviso to Order 6 Rule 17 added in terms of Code of Civil Procedure (Amendment Act of 2002), which provides that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter, for which amendment is sought, before the commencement of the trial.

Thus, the underlying object of Order 6 Rule 17 is that the material facts and necessary particulars must be stated in the pleadings. The object of the rule is that the Court should try the merits of the case that comes before it and should consequently allow the amendments that may be necessary for determining the real question in controversy between the parties, as ultimately the Courts exist for doing justice between the parties and not for punishing them. The Courts are empowered to grant amendments of the pleadings in the larger interest of doing full and complete justice to the parties. The provision of Order 6 Rule 17, in law, is intended for promoting the ends of justice and not for defeating them.

12. Keeping in mind the aforesaid scheme, nature, scope and object of Order 6 Rule 17 CPC and turning back to the facts of the case, it is not in dispute that the trial of the case is yet to commence, as the trial Court has not framed issues in the matter. It is also not in dispute that the application, whereunder the

impugned order has been passed came to be filed by the defendants/respondents 3 to 6 herein for elaborating the averments, as contained in Paras (7) & (13) of the written statement to plead that the plaintiff/petitioner though have had been married to the deceased-Hardeep Singh, yet upon his death, left the house of the deceased on the next day of the Kriya Karam and married one-Kuldeep Singh S/o Rasal Singh and has been living with the said Kuldeep Singh as his legally wedded wife. The said elaboration of the written statement cannot said to be a pleading sought to be incorporated in the written statement by the defendants/respondents herein for withdrawing an admission made by the defendants/respondents in the original written statement, in that, the defendants/respondents admit the plaintiff/petitioner to have had married the deceased yet by way of elaboration intended to plead that upon death of the deceased on the next day of his Kriya Karam, the plaintiff/petitioner left his house and tied matrimonial knot with one-Kuldeep Singh S/o Rasal Singh. The said pleading sought to be introduced in the written statement by the defendants/respondents 3 to 6 herein is material in nature and character having regard to the nature of controversy involved in the suit filed by the plaintiff/petitioner, thus, would be imperative for the trial Court to decide the issues involved in the suit effectually and conclusively on its merits, as risking repetition the object of Order 6 Rule 17 is that the Court should try the merits of the case that comes before it and grant amendment of the pleadings in larger interest of doing full and complete justice to the parties. The plaintiff/petitioner cannot be said to have suffered any prejudice on account of allowing of the amendment by the trial Court in terms of the impugned order as the plaintiff/petitioner would be well within her rights to contradict the stand taken

by the defendants/respondents herein, as has been sought by way of amendment by them before the Trial Court.

13. In view of the aforesaid facts and circumstances coupled with the principles of law noticed in the preceding Paras, the impugned order, does not call for any interference, more so, in exercise of Supervisory Jurisdiction vested in this Court under Article 227 of the Constitution of India in view of the judgment passed by the Apex Court in case titled as, “*Shalini Shyam Shetty vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329”. **Resultantly, the petition fails and is, accordingly, dismissed.**

(Javed Iqbal Wani)
Judge

Jammu:
31.05.2023
Avish Kohli

Whether the order is speaking? Yes
Whether the order is reportable? Yes

