

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).1005 OF 2020
(Arising out of SLP (C) No(s). 17289 of 2015)

URMILA PASARI AND OTHERS

...APPELLANT(S)

VERSUS

EXIDE INDIA LIMITED

...RESPONDENT(S)

ORDER

Leave granted.

2. The appellants are aggrieved by order dated 11.02.2015 rejecting their Civil Revision Application, affirming order dated 10.11.2014 passed by the Civil Judge Senior Division, 4th Court, Alipore, rejecting their application for substitution in place of proforma defendant no.2.

3. Title Suit No. 160 of 1982 (New Title Suit No. 41 of 2008) for ejectment and mesne profits was filed against the defendant by Smt. Surma Devi Pasari. The daughter-in-law of the plaintiff, Smt. Sabitri Devi Pasari was impleaded as defendant no.2. It was pleaded that the latter was the real beneficiary owner of the suit

premises and required the same for her use as she was staying in rented accommodation. The plaintiff and Smt. Sabitri Devi Pasari were both deceased during the pendency of the suit. A last Will and Testament was executed on 26.10.2009 by Smt. Sabitri Devi Pasari. She willed the suit property to the appellants appointing Sh. Bhagirath Pasari as the sole executor of her will. Probate having been obtained on 08.10.2013, Sh. Bhagirath Pasari executed a registered deed of assignment in favour of the appellants. The appellants filed an application under Order I Rule 10(2) of the Code of Civil Procedure (hereinafter referred to as the "Code") for substitution in place of Smt. Sabitri Devi Pasari which was rejected by the Civil Judge as being barred by limitation having been preferred beyond the statutory period of 90 days. The rejection has been affirmed by the High Court.

4. Shri Gopal Sankarnarayanan, learned senior counsel appearing for the appellant, submits that the nomenclature of the application for substitution was not decisive. Essentially, it was an application under Order 22 Rule 10 of the Code and for which there was no time limit prescribed, relying on *Chandra Bai (Dead) through*

Legal Representatives vs. Khandalwal Vipra Vidyalaya Samiti and Others, 2016 (12) SCC 534. The appellant ought to have been substituted and then transposed as plaintiffs under Order 23 Rule 1A of the Code. The present order will only lead to multiplicity of proceedings by requiring the appellant to institute a fresh eviction which will only delay matters to the benefit of the respondent.

5. Shri Ranjan Mukherjee, learned counsel for the respondent, contended that the impugned orders call for no interference as substitution was sought after expiry of 90 days.

6. We have heard learned counsel for the parties. Smt. Sabitri Devi Pasari was the real beneficiary of the eviction suit. She assigned her interests to the appellants by her last Will and Testament dated 20.10.2009. Consequent to her demise on 06.12.2012 and the probate granted upon the same, the appellants became the beneficiaries by virtue of registered assignment dated 21.12.2013. Pursuant thereto, the appellants filed an application for substitution in place of Smt. Sabitri

Devi Pasari in February 2014, under Order I Rule 10(2). It, therefore, cannot be said *prima facie* that the application for substitution was beyond a period of 90 days from the date of knowledge consequent to the Assignment Deed.

7. Order I Rule 10(2) empowers the court to add or delete parties whether it be a plaintiff or defendant, to enable the court to effectually or completely adjudicate upon and settle all questions involved in a suit. The purpose is salutary to avoid multiplicity of adjudication. The provision reads as follows:

“10(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

8. In *Anil Kumar Singh vs. Shivnath Mishra*, 1995 (3) SCC 147, it was observed as follows:

"...The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

9. Consequent to the demise of Smt. Sabitri Devi Pasari, the appellants acquired a right to substitution in her place only after they were made aware of the assignment deed dated 21.12.2013. They had made out a clear case for substitution in place of proforma defendant no.2. The right to seek transposition as a plaintiff under Order 23 Rule 1A would have arisen only thereafter. It is considered useful to extract the provision as follows:

"1A. When transposition of defendants as plaintiffs may be permitted:- Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

10. Order 22 Rule 10 provides that in cases of assignment or creation or devolution of interests during the pendency of the suit, the court in its discretion may allow the suit to be continued by the person upon whom

such interest has come or devolved. The Rule reads as follows:

"10. Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

11. We find much force in the contention of the appellant that Order 22 Rule 10 does not prescribe any period of limitation and the right to apply under the Rule was a continuous right and an application could be made at any time till the proceedings are pending. Whether the application should be allowed or not was basically in the discretion of the court upon its *prima facie* satisfaction on facts whether to allow or not to allow such application.

12. In *Chandra Bai* (supra), this court observed as:

"We have further noticed that in *Baijnath Ram vs. Tunkowati Kuer* the Full bench of the Patna High Court has held:

"15. ...Another thing to notice in connection with this rule is that a party on whom the interest of the deceased plaintiff or defendant devolves is not entitled to continue the suit or appeal as a matter of right, is essential to obtain the leave of the Court. The granting of leave is within the discretion of the Court. The court, however, is to exercise its discretion judicially and according to well-established principles. Further, unlike Rules 3 and 4, no limitation is prescribed for presentation of an application under this rule and no penalty is laid down for failure to substitute the person on whom the interest of the deceased plaintiff or defendant was devolved. Therefore, the right to make an application under this rule is a right which accrues from day to day and can be made at any time during the pendency of a suit. There is no abatement under this rule."

13. We are conscious of the fact that no plea was raised before the High Court under Order 22 Rule 10. But the Civil Revision Application specifically averred that after the appellants were substituted under Order I Rule 10(2) they would then seek transposition as plaintiffs. The impugned orders are non-speaking in nature and do not consider the plea of the appellants to seek substitution as proforma defendants by reason of the deed of assignment dated 21.12.2013 and that the application under Order I Rule 10(2) had been filed as early as

February, 2014. In our opinion the present was an appropriate case to also consider condonation of delay in substitution in the facts of the case. In absence of the plaintiff who had since been deceased, the eviction suit itself would become infructuous.

14. Appropriately, in view of the fresh grounds urged before us under Order 22 Rule 10 to which the High Court had no occasion to apply its mind, the matter should have been remanded to the High Court for fresh consideration. But we are satisfied that no useful purpose would be served by that course of action as the eviction suit itself is very old and are stated to be required for personal use.

15. In the peculiar facts and circumstances of the case, we set aside the impugned orders, allow the appellants to be substituted in place of proforma defendant no.2 and at this stage itself, to expedite the eviction proceedings, direct that the appellants be transposed as plaintiffs. The eviction suit shall now proceed in accordance with law and be decided expeditiously preferably within a maximum period of six months from the date of receipt and or production of the present order before the court concerned.

16. The appeal is allowed.

.....J.
(Ashok Bhushan)

.....J.
(Navin Sinha)

New Delhi,
February 04, 2020.

ITEM NO.26

COURT NO.9

REVISED
SECTION XVIS U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SSPECIAL LEAVE PETITION(C) NO. 17289/2015

URMILA PASARI & ORS.

Appellant(s)

VERSUS

EXIDE INDIA LIMITED .

Respondent(s)

(IA No. 156338/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 04-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHAFor Appellant(s) Mr.Gopal Sankarnarayanan, Sr. Adv.
Mr.Snehal Kakrania, Adv.
Mr.Shrutanjay Bhardwaj, Adv.
Mr.Sanjeev Kumar, Adv.
M/S. Khaitan & Co., AORFor Respondent(s)
Mr. Ranjan Mukherjee, AORUPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeal is allowed in terms of the signed order.

Pending application(s), if any, stand disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT(RENU KAPOOR)
BRANCH OFFICER

(The Signed Order is placed on the file)

ITEM NO.26

COURT NO.9

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION(C) NO. 17289/2015

URMILA PASARI & ORS.

Appellant(s)

VERSUS

EXIDE INDIA LIMITED .

Respondent(s)

IA No. 156338/2019 - PERMISSION TO FILE ADDITIONAL
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Date : 04-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr.Gopal Sankarnarayanan, Sr. Adv.
Mr.Snehal Kakrania, Adv.
Mr.Shrutanjay Bhardwaj, Adv.
Mr.Sanjeev Kumar, Adv.
M/S. Khaitan & Co., AOR

For Respondent(s)
Mr. Ranjan Mukherjee, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

Appeal Allowed.

Detailed order follows.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT

(RENU KAPOOR)
BRANCH OFFICER