

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

Civil Appeal No 3368 of 2020
[Arising out of SLP(C) No 5348 of 2018]

M/s Samra Poultry Products Pvt Ltd

Appellant(s)

Versus

Superior Tools Company and Others

Respondent(s)

ORDER

- 1 Leave granted.
- 2 The trial court rejected an application under Order VI Rule 17 of the Code of Civil Procedure 1908. The High Court by its order dated 10 May 2017 affirmed the order, of the trial court while rejecting the revision application filed by the appellant.
- 3 On 10 January 2014, the appellant instituted a suit for a permanent injunction against the respondents from interfering with his alleged possession of the suit property. The respondents filed their written statement on 24 January 2014 claiming to be owners of the suit property under a registered sale deed dated 19 November 1999. Within four days of the filing of the written statement, the appellant moved an application on 28 January 2014 under Order VI Rule 17 of the CPC seeking an amendment of the plaint to set up a prayer for a

declaration of the invalidity of the sale deed. The application for amendment was dismissed by the Civil Judge on 17 November 2015. The High Court has taken the same view. Both the trial court and the High Court proceeded on the basis that the appellant being a party to the sale deed would have knowledge of the sale deed and that the plea for amendment would hence be barred by limitation. That apart, the High Court has held that the nature of the suit would be altered by the amendment.

- 4 Mr Abhimanyu Bhandari, learned counsel appearing on behalf of the appellant assails the order of the High Court by submitting that the application for amendment was moved within a period of four days of the filing of the written statement. It has been urged that the trial court and the High Court were in error in deciding the issue of limitation which has to be addressed at the trial. Moreover, it was urged that the question whether the appellants were or were not aware of the sale deed raises triable questions.
- 5 On the other hand, Mr Shubham Bhalla, learned counsel appearing on behalf of the first and second respondents with Mr Harsh Bungler submits that the trial has progressed and four witnesses have been examined since there was no stay in the meantime. Moreover, it has been submitted that the depositions of PW 2 and PW 3 would indicate that the revenue records have reflected the name of the respondents

as owners of the property. Hence, according to the respondents, it is not conceivable that the appellant did not have knowledge of their ownership of the suit property.

- 6 The record indicates that after the suit was instituted on 10 January 2014, the respondents filed their written statement on 24 January 2014 in which they have relied on the sale deed dated 19 November 1999. The application for amendment was filed on 28 January 2014. In this view of the matter, we are of the view that having due regard to the settled principles which govern the provisions of Order VI Rule 17 of the CPC, the application for amendment should have been allowed. Whether the prayer for declaration is barred by limitation is a separate issue which, would have to be expressly kept open. In other words, we clarify that while we are inclined to allow the amendment which we hereby do, we expressly leave open the question of limitation to be decided by the trial court at the trial of the suit.

- 7 The appeal is accordingly allowed and the impugned judgment and order of the High Court dated 10 May 2017 is set aside. The application for amendment under Order VI Rule 17 of the CPC is accordingly allowed. The respondents shall be at liberty to file their written statement in response to the plaint as amended, within a period of four weeks. The issue of limitation is expressly kept open to be raised before and decided by the learned trial Judge.

8 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indu Malhotra]

.....J.
[Indira Banerjee]

New Delhi;
October 5, 2020
CKB

ITEM NO.25

Court 3 (Video Conferencing)

SECTION IV-B

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

Petition(s) for Special Leave to Appeal (C) No.5348/2018

(Arising out of impugned final judgment and order dated 10-05-2017 in CR No. 1992/2016 passed by the High Court of Punjab & Haryana at Chandigarh)

M/S SAMRA POULTRY PRODUCTS PVT. LTD.

Petitioner(s)

VERSUS

SUPERIOR TOOLS COMPANY & ORS.

Respondent(s)

(With appln.(s) for exemption from filing c/c of the impugned judgment)

Date : 05-10-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Abhimanyu Bhandari, Adv.
Mr. Shree Pal Singh, AOR

For Respondent(s) Mr. Shubham Bhalla, AOR
Mr. Harsh Bungler, Adv.
Mr. Yajur Bhalla, Adv.
Mr. Deepak Samota, Adv.

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

- 1 Leave granted.
- 2 The appeal is allowed in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER\

(Signed order is placed on the file)