

Babarao Vs. Sonba

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Court : Mumbai

Decided On : Sep-03-1975

Reported in : AIR1976Bom332; 1976MhLJ7

Judge : Dharmadhikarri, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 6, Rule 17

Appeal No. : Civil Revn. Appln. No. 544 of 1974

Appellant : Babarao

Respondent : Sonba

Advocate for Def. : G.B. Gandhe, Adv.

Advocate for Pet/Ap. : V.S. Sirpurkar, Adv.

Judgement :

ORDER

1. This revision application has been filed by the original plaintiff against the order passed by the Civil Judge, Junior Division, Darwha, dated 6 - 12 -1974 rejection his application for amendment of the plaint. Before recording of the evidence the plaintiff filed an application for amendment of the plaint and the map which was in the nature of clarification. This application was opposed by the defendant and ultimately the learned Judge came to the conclusion that as the suit is long

pending and the amendment application is filed at the last stage, it does not appear to be bonafide. He further came to the conclusion that by the amendment of the defendant will be required to be changed. According to the learned Judge, proposed amendment as stated in para 5. of the application changes the nature of the suit. In this view of the matter, therefore, he rejected the application. As already observed, it is this order which is challenged in this revision application.

2. Shri Sirpurkar, the learned counsel for the applicant contended before me that the learned Judge committed an error in holding that the proposed amendment will change the nature of the suit itself. He further contended that the learned Judge was not right in holding that by the amendment the entire pleadings of the plaintiff and the defendant will be required to be changed or the amendment is not bonafide. In my opinion, there is much substance in this contention.

3. From the record it seems that all the necessary allegation were already made in the plaint itself. The plaintiff wanted only to clarify certain position by the proposed amendments. Vide para. 3 of the application, the plaintiff sought permission to file a corrected map and by paras. 4 and 5 of the application he wanted to carry out consequential amendments in the plaint clarifying the positions. In this view of the matter, in my opinion it cannot be said that the amendments will change the nature of the suit. The said amendments application has been filed recording of the evidence itself. Therefore it cannot be said that it is filed at a late stage. Mere pendency of a suit for a long period cannot be a ground for rejection an amendment application. As observed by the Supreme Court in *Jai Jai Rame Manohar Lal v. National Building Material Supply, Gurgaon*, : [1970]1SCR22 ;

'The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitation.

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that te party applying was acting mala fide, of that by his blunder he had caused injury to his opponent which may not be compensated for by the order of costs. However, negligent or

careless may have been the first omission, and however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.'

In view of the proposition of law as laid down by the Supreme Court, it is obvious that while rejection the application for amendment made by the plaintiff the learned Judge has acted illegally and with material irregularity while exercising the jurisdiction vested in him by law.

4. In the result, therefore, the revision application is allowed. The order passed by the learned Judge dated 6-12-1974 rejecting the application filed by the plaintiff for amendment of the plaint is set aside. As a consequence of this, the application filed by the plaintiff for amendment of the plaint is allowed. The defendant will be at liberty to amend his written statement if he so desires. However, in the circumstance of the case there will be no order to costs.

5. Application allowed.

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