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**Sanjeevappa Vs. Ajjappa**

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**SooperKanoon Citation** : sooperkanoon.com/372665

**Court** : Karnataka

**Decided On :** Feb-17-1967

**Reported in** : AIR1969Kant293; AIR1969Mys293

**Judge** : Santhosh, J.

**Acts** : Mysore Agriculturists' Relief Act - Sections 24

**Appeal No.** : C.R.P. No. 910 of 1965

**Appellant** : Sanjeevappa

**Respondent** : Ajjappa

**Judgement** :
ORDER

1. The question for decision in C.R.P. 909 of 1965 is whether the respondent (defendant) is an agriculturist's Relief Act.

2. The petitioner before this Court was the plaintiff in O. S. 593/63 in the Court of the Munsiff, Chitradurga. The plaintiff brought the suit against defendant (respondent) on two pronotes for Rs. 390 dated 15-7-1957. The contention of the plaintiff was that the defendant was an agriculturist both at the time when the suit pronotes were executed and also at the time the suit was instituted.

It may be mentioned that the suit was instituted on 20th September 1963. The plaintiff relied on the extended period of limitation given by S. 24 of the Mysore Agriculturists' Relief Act. The learned Munsiff held that the defendant was no an agriculturist as per the Mysore Agriculturists Relief Act and held that the plaintiff is not entitled to claim the benefit of the extended period of limitation under Section 24 of the said Act and dismissed the suit. This revision petition is directed against the said order of the learned Munsiff.

3. Sri Srinivas, learned counsel appearing on behalf of the petitioner has contended that the learned Munsiff has failed to consider the question whether the respondent was an agriculturist on the date of the suit transaction namely, date of the suit pronotes.

He argues that as per the Full Bench decision of this Court in Muttiah v. Kuber Singh, 1966-2 Mys LJ 289 (FB) the relevant question is whether the debtor was an agriculturist on the date of the suit transaction. He therefore contends, as the learned Munsiff has not given any finding on this question, this is a fit case where the matter should be remanded to the learned Munsiff to give a proper finding.

4. After going through the order of the learned Munsiff. I am of opinion, that there is considerable force in the contention of Sri Srinivas. The learned Munsiff has not considered whether the respondent was an agriculturist on the dates of the suit transactions. The learned Munsiff, after considering the evidence only says that the defendant's income from agriculture is about Rs. 4,000 and hence, he is not an agriculturist.

In the Full Bench decision referred to above, this Court has held that the extended period of limitation claimable under S. 24 of the Act is available in all cases where the debt is borrowed by a person who was am agriculturist on the date of the suit transaction, whether he, his heirs or his legal representatives are agriculturists on the date of the suit or not. If the original debtor was an agriculturist on the date of the suit transaction, it is immaterial whether his legal representative sued upon is an agriculturist on the date of the suit or not.

The finding given by the learned Munsiff is as follows:--

'In view of the above discussion I hold that agriculture has been the sole occupation of the defendant and his income from agriculture has been about Rs. 4,000 more than the maximum of Rs. 2,000 prescribed under M.A.R. Act. The defendant is therefore not an agriculturist under M.A.R. Act. My finding on the first issue is therefore in the negative and against the plaintiff In view of my finding on the first issue, the suit is liable to be dismissed as being barred by time as the plaintiff is not entitled to claim the benefit of extended period of limitation provided under Section 24 of M.A.R. Act. Consequently the suit is dismissed with costs as being barred by time.'

5. It is therefore clear that the learned Munsiff did not apply his mind to the question whether the respondent was an agriculturist on the dates of suit transactions and no finding has been recorded by him that the respondent was not an agriculturist on the dates of the suit transaction. Hence the order of the learned Munsiff dismissing the suit on the preliminary issue is without jurisdiction and is liable to be set aside.

6. C.R.P. No. 910/65 is directed against the order passed by the learned Munsiff on I. A No. 2 in the same suit, rejecting the application filed by the plaintiff for amendment of the plaint under Order VI, Rule 17 C.P.C. As stated already the plaintiff filed the suit for recovery of the amounts due on two promissory notes executed by the defendant on 15-7-1957 and 17-8-1957. The plaintiff (petitioner) had contended that the defendant (respondent) was an agriculturist and had claimed the extended period of limitation under S. 24 of the Mysore Agriculturists' Relief Act. In the amendment application, the petitioner stated that recent enquiries revealed that the defendant has admitted the suit debts in his loan application to the Land Mortgage Bank. Challakere on 17-11-1961. Hence, there has been an acknowledgment of the debts. Therefore, there was no bar of limitation for the suit, and hence it was necessary to raise the above plea in the plaint. Therefore he prayed for permission to amend the plaint.

7. This application was opposed by the respondent stating that the suit was brought under the Mysore Agriculturists' Relief Act and limitation was claimed under the said Act. The application to the Bank is not an acknowledgment of the

debts of the plaintiff. The present amendment prayed for would deny the defendant his legal right and would change the cause of action for the suit.

8. The learned Munsiff rejected the application for amendment filed by the petitioner. The learned Munsiff was of the opinion that the loan application before the Bank acknowledging the suit debts was filed on 17-11-1961. The present amendment application was filed on 18-11-1964 and therefore, the claim would have been barred by time by one day. The amendment sought for by the plaintiff if allowed, would cause injury to the defendant which could not be compensated by costs since it would deprive the defendant of a good defence to the claim.

9. It is contended by Sri Srinivas that by the amendment, the cause of action would not be changed. The plaintiff has not put forward any different case. There is no question of the respondent (defendant) being taken by surprise as the petitioner is relying on his (defendant's) own admission. The amendment relates only to the extended period of limitation. Sri Srinivas has strongly relied on the latest decision of the Supreme Court in A. K. Gupta & Sons Ltd. v. Damodar Valley Corporation : [1966]1SCR796 , in support of his contention that the learned Munsiff should have allowed the amendment prayed for.

10. The plaintiff has not put forward any new case or a different case from what he had put forward in the plaint. He is not basing his case on any new cause of action and the cause of action is the same. He is only praying for the extended period of limitation. It cannot be said that the respondent is taken by surprise as the plea of limitation. It cannot be said that the respondent is taken by surprise as the plea of limitation is based on the acknowledgment made by the respondent himself. The Court can permit the plaintiff to amend his pleading and allow him to substitute or add another ground of limitation.

In Firm Gunnaji Bhawaji v. Makanji Khoosalachand, (1909) ILR 34 Bom 250, the suit was brought by the plaintiff for recovery of the amount due on the foot of accounts and the defendant raised the plea of limitation. The plaintiff therefore applied for leave to amend the plaint by setting out an acknowledgment in writing signed by the defendant. The Lower Court rejected the application for amendment. Sir Basil Scott, C. J. speaking for the Bench observed as follows:--

'In this case we cannot agree with the learned Judge of the Court below that an amendment such as was asked for would convert the suit into a suit of different and inconsistent character. The suit would remain the same based upon exactly the same cause of action except for the addition of one allegation. **

*** ***'.

Their Lordships therefore allowed the amendment. Again in Percy F. Fisher v. Ardeshir Hormasji, AIR 1935 Bom 213 it has been held that the Court may at any stage of the proceedings of a suit allow a party to amend his pleadings by permitting him to substitute one ground of exemption for limitation for another.

11. In : [1966]1SCR796 their Lordships of the Supreme Court have observed as follows:--

'It is not in dispute that at the date of the application for amendment a suit for a money claim under the contract was barred. The general rule no doubt is that a party is not allowed by amendment to set up a new cause of action particularly when a suit on new case or cause of action is barred. Weldon v. Neale, (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more that a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation. See Charan Das v. Amir Khan, 47 Ind App. 255 = (AIR 1921 PC 50) and Leach L. J. and Co. Ltd. v. Jardine Skinner and Co. : [1957]1SCR438 '.

12. The order of the learned Munsiff is therefore illegal and he has failed to exercise the jurisdiction vested in him. The impugned order is according set aside. The learned Munsiff is directed to allow the amendment of the plaint prayed for by the petitioner.

13. In the result, both the Civil Revision Petitions 909/65 and 910/65 are allowed. The respondent will pay costs of petitioner in both the petitions.

14. Petitions allowed.

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