

Devendrappa and Others Vs. Ramappa Sankappa Hubli

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Court : Karnataka

Decided On : Aug-28-1998

Reported in : 1999(2)KarLJ71

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 6, Rule 17;
[Specific Relief Act, 1963](#) - Sections 16

Appeal No. : Civil Revision Petition No. 2429 of 1994

Appellant : Devendrappa and Others

Respondent : Ramappa Sankappa Hubli

Advocate for Def. : Smt. Sharada, Adv., for Sri M. Ram Bhat

Advocate for Pet/Ap. : Sri V.T. Rayareddi, Adv.

Judgement :

ORDER

1. This revision petition arises from the judgment and order dated 29-6-1994 passed by the learned Munsiff, Ramdurg, allowing I.A. III moved by the plaintiff in Original Suit No, 234 of 1990. By the amendment, the plaintiff sought to remove a technical defect in the plaint i.e., lack of averment which is required to be made under Section 16(c) of Specific Relief Act read with explanation thereof namely

there was no specific averment in expressed terms that the plaintiff is and has always been ready to perform his part of contract. This allegation being wanted and as it was not there in expressed terms, the plaintiff moved the application for amendment and the Court below after considering the matter, allowed the amendment. So defendants felt aggrieved and have come up in revision.

2. It has been contended before me by the learned Counsel for the revision petitioner that the Court below should not have allowed the amendment as on the date if it would have been filed in amended form, suit would have been barred by limitation and the plaintiff would not have been entitled to the decree for specific performance of contract. This suit was filed no doubt within three years from the date of agreement, learned Counsel contended, but the amendment application had been moved much beyond the expiry of period of limitation on 24-9-1993. Learned Counsel contended that the Court below acted illegally or to say committed jurisdictional error in allowing the amendment.

3. These contentions of the learned Counsel for the revision petitioner have been hotly contested by Smt. Sharada holding brief for Sri M. Ram Bhat, learned Counsel for the opposite party.

Learned Counsel for the respondents contended that in the plaint in paragraph 1 it has been averred that the plaintiff had already paid a sum of Rs. 9,050/- on the date of agreement and thereafter the plaintiff approached the defendants with the balance of consideration namely Rs. 4,450/-. But the defendants continued to avoid. Therefore, the need for the suit has arisen. Learned Counsel contended that the plaintiff filed I.A. for amendment in which it has clearly been alleged that the plaintiff being always ready and willing to perform his part of contract and to bring out the plaint in accordance with the terms and requirements of Section 16(c) of the Specific Relief Act and to complete the cause of action, the amendment had been sought only in order to finally get determined the dispute between the parties, so the amendment was necessary.

4. Sri V.T. Rayareddy, learned Counsel for the revision petitioner, in support of his contentions made a reference to the decision of this Court in the case of Palthur Honnur Saheb v Bopanna Annapurnamma, as well as to the decision of this Court

in the case of Thimme Gowda v Kale Gowda and he also made a reference to the decision of their Lordships of the Supreme Court in the case of Radhika Devi v Bajrangi Singh and Others.

5. I have applied my mind to the contentions made by the learned Counsel for the parties.

Revisional jurisdiction of this Court is confined to jurisdictional error coming either under clause (a), (b) or (c) and not to an error of law or fact. Order VI, Rule 17 of the CPC confers jurisdiction on the Court to allow the amendment at any stage of proceedings where amendments are necessary for the purpose of determining the real question in controversy between the parties. Order VI, Rule 17 reads as under.-

'Rule 17. Amendment of pleadings.-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such 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'.

The mandate of Order VI, Rule 17 is that all such amendments shall be made and be allowed to be made which are necessary for the purpose of determining the real question in controversy between the parties. The object of allowing the amendment is that and the criteria for Court while deciding whether amendment should be allowed or not is to see whether amendment is necessary and essential for determination of the real question involved in controversy meaning thereby that if suit is liable to be dismissed on some sheer technical defects without real questions being determined by the Court and party comes before it to seek the amendment and remove that technical defect so as to enable the Court to determine the real question in controversy, the amendment has to be allowed. The purpose of this provision appears to be and is to subserve the cause of justice and to avoid technicalities that create obstructions in the way of determination of the real question in controversy. This appears to be clear from the expression used in Rule 17 which reads, 'all such amendments shall be made as may be necessary

for the purpose of determining the real question in controversy between the parties'. As mentioned earlier, it confers a power on the Court that the Court may allow such amendments at any stage of the proceedings. The law in this regard has been propounded and laid down in greater detail by their Lordships of the Privy Council in the case of Charan Das and Others v Amir Khan and Others . In that case, their Lordships laid down as under:--

'That there was full power to make the amendment cannot be disputed, and though such a power should not, as a rule, be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case'.

In the case of Pirgonda Hongonda Patil v Kalgonda Shidgonda Patil and Others, their Lordships after having referred the observations of Batchelor, J., in the case reported in Kisandas Rupchand v Rachappa Vithoba, has been pleased to quote the observations from Batchelor, J.'s judgment and laid down the law as under.-

'All amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties....but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side, or can it not'?

6. In the present case, the technical flaw was that the plaint filed by the plaintiff, though did contain the allegation to the effect that the plaintiff with balance of sale

consideration approached the defendants and asked them to execute the sale deed for taking sale consideration. But the defendants continued to avoid. So the suit which gives no doubt an impression and idea and intent of the plaintiff that the plaintiff has always been ready and willing to show his readiness to purchase the property. But Section 16 requires a specific clear-cut averment to be made also in the plaint. That was wanting and that was the technical defect. The lower Court looking to the allegations in paragraph 4 opined that it was only a technical error and to complete the cause of action for plaintiff being entitled to relief, on decision, it was found necessary and justified to allow the amendment. When the Court below was approached firstly, in my opinion, it did not commit any jurisdictional error and it appears to have followed the principles of law laid down in the case of *G. Jaikishan Joshi v P.M. Kalwar*. In that case also, the amendment required to be made under Section 16(c) of the Specific Relief Act read with explanation to that section was wanting though other allegations definitely gave an idea of plaintiffs readiness. The Trial Court, no doubt, rejected the application and in the revision the learned Single Judge of this Court dismissed the revision affirming the Trial Court's order and which their Lordships of the Supreme Court had been pleased to allow the appeal and allowed the amendment to be carried out in the plaint by incorporating the allegation to the effect that plaintiff has been ready and always willing to perform his part of contract. Their Lordships of the Supreme Court in *Jaikishan Joshi's case*, *supra*, observed in paragraph 5 as under:--

'In the present case, no special cause of action was sought to be introduced by the amendment applied for. All that the appellant sought to do was to complete the cause of action for his specific performance for which relief he had already prayed. It was only that one averment required in law to be made in the plaint in a suit for specific performance in view of sub-section (3) of Section 16 of the Specific Relief Act which was not made probably on account of some oversight or mistake of the lawyer who drafted the plaint and that error was sought to be rectified by amendment applied for. There was no fresh cause of action sought to be introduced by the amendment. Hence, no question of causing any injustice to the respondents on that count'.

7. It is also well settled as mentioned above by their Lordships of the Privy Council that no doubt as a rule, amendment which would have rendered a fresh cause of action should not be allowed. That is a fact to be taken into consideration as to whether amendment should be allowed or not. But, that does not affect the power and jurisdiction of the Court to allow the amendment. In the case of *L.J. Leach and Company Limited and Another v M/s. Jardine Skinner and Company*, the company sought to make a claim for damage in alternative for the non-delivery of the assignment of the goods by the defendant and breach committed by the defendant and in that case, plaintiff suffered from lack of allegation to the effect that plaintiffs, in alternative, are entitled to claim damages. The Court in that case though the amendment was delayed, allowed the amendment and remanded the suit as the justice required that the amendment should be allowed. So it cannot be said that as a rule of law, jurisdiction of the Court is taken away in the matter of allowing the amendment where there is delay and there is question of limitation or lapse of time. The basic consideration is determination of real question between the parties. No doubt, if a completely new case is made out i.e., new claim based on new facts and new cause of action and ideas and same is barred by time, then such an amendment is not allowed which has an effect of introducing a new cause of action if time for that has expired. What is new case or new cause of action has well been explained by their Lordships of the Supreme Court in the case of *A.K. Gupta and Sons Limited v Damodar Valley Corporation*, where their Lordships dealing with the expression 'new cause of action' and 'new case' observe:

'The expression 'new cause of action' and 'new case' only means new claim made on a new basis constituted by new facts. The words new case means new set of ideas. Thus no amendment will be allowed to introduce new set of ideas to the prejudice of any right acquired by any party by lapse of time'.

8. So far as amendment in the present case is concerned, it does not amount to new case or cause of action. No new relief is claimed. Here only an amendment is sought to remove the technical defect which might have deprived him to justice and which might have resulted in Court inability determining the real question of controversy between the parties.

9. Thus considered in my opinion, the Court below did not commit any jurisdictional error by allowing the amendment. It is also one of the well settled principles of law as laid down by their Lordships of the Supreme Court in very many cases that ordinarily in the matter of discretionary orders passed by the Court such as order allowing the amendment, this Court should avoid interference under Section 115.

10. Thus considered in my opinion, the present revision has got no merits. No doubt, when amendment was sought a bit late, the Trial Court while allowing the amendment should have put the plaintiff to the terms of cost. As such, the only modification required in the order allowing the amendment is that the plaintiff should be put to payment of cost. Only to this extent, the revision is allowed, otherwise it is dismissed. The amendment which has been allowed is made subject to the cost of Rs. 550/- to be payable by the plaintiff i.e., amendment sought and is allowed subject to payment of above cost of Rs. 550/- by plaintiff to defendants.

11. Subject to the above modification, the revision is dismissed in entirety, i.e., the revision disposed off, as hereinafter that order in which the amendment application being allowed by Trial Court is maintained, no doubt subject to payment of cost of Rs. 550/- by the plaintiff-respondent to defendant-revision petitioner. Cost of this revision arc made easy.