

Ninge Gowda Vs. Sahadevan

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Court : Karnataka

Decided On : Jun-11-1996

Reported in : ILR1996KAR2462; 1996(3)KarLJ226

Judge : M.F. Saldanha, J.

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

Appeal No. : C.R.P. No. 3585/1992

Appellant : Ninge Gowda

Respondent : Sahadevan

Advocate for Def. : M.T. Nanaiah, Adv.

Advocate for Pet/Ap. : S. Shekhar Shetty, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M.F. Saldanha, J.

1. The short point that arises for determination in this proceedings centres around the question as to whether an application for amendment of a written statement should be permitted if it is demonstrated that through such an amendment, the

original case made out would be sufficiently altered to the extent of virtually making out a new case and at the same time, totally nullifying the effect of admissions earlier contained in the written statement. Briefly stated, the 5th defendant to the suit, which was one for specific performance, had filed his written statement in which there was an admission to the effect that an agreement had been entered into for sale of the property in the year 1985. This was precisely the plaintiff's case and the suit for specific performance was based on this agreement and the admission on the part of defendant-5 constituted material on which the plaintiff would place reliance. Subsequently, the 5th defendant presented the application for amendment whereby he sought to contend that he was a tenant since the year 1977 and that through an earlier agreement, the owner had agreed to sell the property to him and that he was put in possession by way of part performance. The plaintiff opposed the application for amendment on the ground that it radically altered the case that was originally made out and also on the ground that the 5th defendant was making out an entirely new case which detracted violently from what it originally was and more importantly that the earlier admission was now sought to be nullified. In support of this last contention, it was demonstrated that through the proposed amendment it was sought to be contended that since an earlier agreement in favour of defendant-5 existed, that no agreement would have validly been entered into in the year 1985.

2. The learned trial Judge after hearing the parties rejected the contention that a new case was being made out and a perusal of his order indicates that he has unfortunately misconstrued the averments in the proposed amendment to the extent that he was misled to believe that the reference to the agreement in the proposed amendment is the same agreement of 1985. The petitioner's learned Advocate has demonstrated to me that but for this error, the amendment would never have been allowed. The Trial Court having come to the conclusion that the amendment referred to the same agreement has recorded the finding that no new case is being made out which position is erroneous.

3. Petitioner's learned Advocate relied on the decision of the Supreme Court reported in the case of M/S MODI SPINNING & WEAVING MILLS CO. LTD. AND ANR. v. LADHA RAM & CO., : [1977]1SCR728 ' wherein the Supreme Court

categorically held that an application for amendment of a written statement which introduces an entirely different and new case seeking to displace the petitioner completely from admissions made by the defendants in the written statement was liable to be rejected. The Supreme Court had occasion, while construing the provisions of Order 6 Rule 17 C.P.C to observe that even though inconsistent pleas can be made in pleadings, it would not be permissible to allow an amendment where a plaintiff will be irretrievably prejudiced by being denied the benefit of the admission earlier made. The learned Advocate submitted that even though an application for amendment is normally not opposed, that this was one of the cases where the effect of the amendment was so far reaching and disastrous to the plaintiff, that it would be destructive of the plaintiff's very case and that therefore, that it was essential for this Court to intervene in the matter as there is a clear error of law apparent in the order of the Trial Court.

4. On behalf of the respondent, the usual argument is canvassed that it is always open to the parties to agitate the matter completely at the stage of evidence and that if for any reason the pleadings required to be altered, that the Court should always permit this. Also, what is sought to be contended is that if due to a mistake complete or correct facts were not earlier set out, that these should be incorporated in the written statement and that it is always open to the plaintiff to cross-examine defendant-5 and challenge the subsequent version and if necessary establish that it is a fabrication.

5. It is true, that Courts are generally lenient as far as permitting amendments but experience has shown that a sufficient amount of tightening up has now become necessary. Pleadings in civil proceedings are sacrosanct and are not to be lightly taken. They are solemn statements in writing and they are supposed to represent the respective cases. An amendment in the circumstances is merely an exception and can be permitted only where valid justification exists such as in a situation where the Court is satisfied that there was genuine and valid ground for the material not, having been incorporated earlier. A specific situation in this regard is where despite the best efforts, some new and material fact has come to the notice of the parties at a later stage. Merely because the evidence has not commenced, an amendment is not to be mechanically allowed.

6. There is another dimension to this aspect of the law namely that an amendment at any stage involves a certain amount of procedural and judicial time and having regard to the pressures on the Courts, there is hardly any scope to permit this in the present situation. Experience has also shown that many of the amendments are with the sole purpose of complicating, protracting and dilating the proceeding and it is for this reason that a Court will have to be extremely vigilant in all cases where applications for amendment are made. More importantly, in this background the law will have to be strictly applied in situations where the amendment demonstrates that a new case is sought to be made out or, as has happened in the present instance, the benefit of a specific admission is sought to be nullified. That is not permissible in so far as there is a rule of finality where pleadings are concerned and the parties are required to state their respective cases once and for all and thereafter proceed on that basis.

7. It is in this background that interference is essential in the present proceedings. The learned Trial Judge was in error in having permitted the 5th defendant to amend the written statement through an amendment which specifically and drastically alters the defence originally pleaded and at the same time, seeks to nullify the admission that was on record.

8. The Petition accordingly succeeds. The order of the learned Trial Judge is set-aside and the application for amendment to stand dismissed. The interim stay earlier granted by this Court is accordingly vacated. There shall be no order as to costs.