

Ram Gopal Vs. Prabhu

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Court : Allahabad

Decided On : Sep-17-1981

Reported in : AIR1982All309

Judge : T.S. Misra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 9

Appeal No. : Civil Revn. No. 366 of 1978

Appellant : Ram Gopal

Respondent : Prabhu

Disposition : Revision allowed

Judgement :

ORDER

T.S. Misra, J.

1. This revision is directed against an order passed by the court below rejecting the application for amendment of the plaint. Learned counsel for the revisionist submitted that the amendment of the plaint was asked for keeping in view the amendment made in the provisions of Sections 134 to 136, U. P. Zamindari Abolition and Land Reforms Act. He says that subsequent events by way of change in law can always be taken note of by the court to do real justice in the

case and in support of his contention he has placed reliance on *M. Laxmi & Co. v. Dr. Anant R. Deshpande* (AIR 1973 SC 171), *P. Ven-kateswarlu v. Motor & General Traders* (AIR 1975 SC 1409) and *Ayesha Khatoon v. Durga Sahaya* (AIR 1977 Cal 108). The court below has, however, rejected the application on the ground that by the amendment sought for the plaintiff wants to substitute a relief for prohibitory injunction instead of mandatory injunction. The learned counsel submitted that the plaintiff-applicant had not only asked for the amendment of the plaint so far as the relief clause was concerned but had also asked for various other amendments in the body of the plaint and that the court below erred in not considering each amendment sought for by the plaintiff in the plaint. There is force in the contention. It is quite manifest from the impugned order that the court below had considered only one out of several amendments sought for by the plaintiff and had rejected the entire application. This was not in consonance with law. Obviously the court has exercised its jurisdiction with material irregularity in rejecting the application. It should have considered each amendment sought for by the plaintiff in the application and should have either rejected it or allowed it keeping in view the basic principles pertaining to amendment of pleadings. It is by now well settled that the court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an 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. (See AIR 1969 SC 1267). The Supreme Court in *A. K. Gupta & Sons v. Damodar Valley Corporation* (AIR 1967 SC 96) has clearly laid down that in the matter of allowing amendment of pleading the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred, ny time. Where, however, the amendment does not constitute the ad-dition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts the amendment is to be allowed even after expiry of the statutory period of limitation. Further it was held that the expression cause of action in this context does not mean every fact which is material to be proved to entitle the plaintiff to succeed. The expression only

means a 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.

2. So every amendment sought for in the pleading of a party has to be considered in the light of these well settled principles. The court below has considered only one out of several amendments asked for by the plaintiff. It should have considered all the proposed amendments separately. The application has therefore to go back to the court below for reconsideration in accordance with law and in the light of observations made hereinabove. The revision is allowed. The impugned order dated 7-2-1978 is set aside and the court below is directed to consider the plaintiff's application A-51 for amendment of the plaint in accordance with law and in the light of the observations made hereinabove. As none appears to contest the application, I make no order as to costs.

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