SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Rajeshwar Dayal and anr. Vs. Padam Kumar Kothari and ors.

Rajeshwar Dayal and anr. Vs. Padam Kumar Kothari and ors.

SooperKanoon Citation : sooperkanoon.com/751280

Court : Rajasthan

Decided On : Dec-02-1968

Reported in : AIR1970Raj77

Judge : Jagat Narayan, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115, 151 and 153 - Order 6, Rule 17; Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1); Rajasthan Premises (Control of Rent and Eviction) (Amendment) Act, 1965

Appeal No. : Civil Revn. Nos. 469 of 1967 and 152 of 1968

Appellant : Rajeshwar Dayal and anr.

Respondent : Padam Kumar Kothari and ors.

Advocate for Def. : D.P. Gupta and; H.C. Rastogi, Advs. for Respondent (in C.R. No. 152 of 1968) and;

Advocate for Pet/Ap. : D.P. Gupta and; H.C. Rastogi, Advs. for Petitoner (in C.R. No. 469 of 1967) and;

Disposition : Petitions allowed

Judgement :
ORDER

Jagat Narayan, J.

1. In these two revision applications the question which arises for consideration is whether the Court committed a material irregularity within the meaning of Section 115(c) in allowing an amendment of the plaint long after the institution of the suit so as to include a cause of action which had not accrued to the plaintiff on the date of the institution of the suits.

2. Civil Revision No. 469 of 1967 arises out of a suit for eviction filed by the plaintiff on 24-1-66 on the ground of sub-letting and personal necessity. On 3-4-67 the plaintiff moved an application for amendment ofthe plaint so as to include another ground for eviction which was not available to him when the suit was filed. The tenancy of the defendant is a monthly one commencing from the 25th of the English calendar month. In his amendment application the plaintiff alleged that the defendant had paid rent upto 24-11-65, but neither paid nor tendered it thereafter so that on 25-5-66 i. e. after the institution of the present suit he has become entitled to evict the defendant on the ground set forth in Section 13 (1) (a) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950 as amended by Act No. 12 of 1965 published in the Rajasthan Gazette dated 9-6-65. This application was opposed by the defendant on various grounds. It was asserted that the defendant had tendered rent to the plaintiff, but he had refused to accept it. On 3-5-67 he made a deposit of the rent due upto 24-4-67 under Section 19-A. It was contended that a cause of action which had not accrued to the plaintiff on the date of the institution of the suit could not be added by way of amendment. The trial Court however allowed the amendment by the following order :

'After careful consideration of legal implication I allow this application for amending the plaint. If the plaintiff cannot succeed on account of subsequent defaults, that will be seen only during the trial of the said case and not in this application for amendment.'

3. In Civil Revision No. 152 of 1968 the present suit was instituted on 8-7-60 for the eviction of the defendant from a shop on the ground of personal necessity. Issues were framed on 9-2-61 and the entire evidence adduced on behalf of the plaintiff was recorded by 7-2-62. On 13-4-67 the statement of the defendant was

recorded and his evidence was going on when an application for amendment of the plaint was made on 19-12-67. It was alleged in this application that the defendant had paid rent upto 30-9-62 but had not paid rent thereafter and on account of his failure to pay the rent after 30-9-62 he had become liable to ejectment on the ground mentioned in Section 13 (1) (a). A prayer was made to allow an amendment of the plaint so as to add this ground of eviction which had accrued to the plaintiff after the institution of the suit. The plaintiff instituted a separate suit for the recovery of arrears of rent from the defendant from 1-10-62 to 31-12-65 which is pending, but in that suit no prayer for eviction on the ground of default was made.

4. The application for amendment was opposed on the ground that the plaint could not be amended so as to include a cause of action which had not accrued to the plaintiff on the date of the suit. It was asserted that the General Watch Company was the tenant and not the defendant and that rent had been tendered in the name of General Watch Company but the plaintiff had refused to accept it. The learned AdditionalMunsif No. 2 Jaipur allowed the amendment without giving any reasons.

5. The contention on behalf of the ap- plicants in these two revision applications is that the Court has no power either under Section 153 or Order 6, Rule 17, Civil P. C. to allow an amendment of the plaint so as to include a cause of action which had not accrued on the date of the suit. These two provisions of law are reproduced below :

'Section 153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.'

'Order 6, Rule 17. 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.'

6. It will thus be seen that the power of the Court to alloxv amendment is circumscribed by the words 'as may be necessary for the purpose of determining the real question in controversy between the parties.' An amendment cannot be allowed if it is not necessary for such a purpose.

7. There is no reported case of the Privy Council or the Supreme Court in which an amendment was allowed so as to enable the plaintiff to include a cause of action which had not accrued to him on the date of the suit. I may mention here that the plaintiff can be allowed to claim a relief not claimed originally where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate.

8. The following decisions of the Privy Council are helpful in determining the limits of the power of the Court to allow amendment or the pleadings:

9. In Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 PC 249, the plaintiff sued in 1913 for specific performance ot the verbal agreement made in 1912 by the defendant with him for transfer of certain land for oil wells in place of the first agreement of 1903 and when the Court found the verbal agreement not proved, the plaintiff applied to amend the plaint by claiming damages for breach of the contract of 1903. It was held that the amendment could not be allowed as it was not open to the Court to permit a new case to be made out. After quoting Section 153 and Order 6, Rule 17 their Lordships observed ;

The real question in controversy between the parties in these proceedings was the existence and the character of an agreement alleged to have been made in 1912 for the delivery of certain sites of oil wells speci-fied and identified by the numbers stated in the plaint, which could only have been delivered in respect of that subsequent bargain. When once that contract has been negatived, to permit the plaintiff to set up and establish another and an independent contract altogether would, in their Lordships' opinion, be to go outside the provisions established by the Code of Civil Procedure, to which reference has been made. It would be a regrettable thing if, when in fact the whole of a controversy between two parties was properly open, rigid rules prevent its determination, but in this case their Lordships think that the rules do have that operation and that it was not open to

the Court to permit a new case to be made.'

In Doorga Prosad v. Secretary of State, AIR 1945 PC 62, the suit was filed on 17th February, 1934 and the relief claimed was (1) a declaration that the certificate lodged by the defendant before the Certificate Officer, Howrah, on 1st April 1933, was illegal and void and inoperative; (2) an injunction restraining the defendant from enforcing or attempting to enforce the said illegal certificate; (3) an account of all monies realised by the defendant under the said illegal certificate and refund thereof to the plaintiff and (4) release from civil prison. No claim was made for the modification of the amount alleged to be due on the certificate if valid. Such a claim was however made before their Lordships of the Privy Council in appeal. Their Lordships however declined to entertain it. It was observed :

'The only question which arises in the appeal is whether a certificate dated 1st April, 1933, issued under the provisions of the Rengal Public Demands Recovery Act, 1913, is a valid certificate. The appellant in his case claims further that the certificate, if originally valid, became unenforceable by reason of matters which occurred after the filing of the suit; but their Lordships are of opinion that the relief claimed in this suit must be confined to matters existing at the date when the suit was instituted.'

In Kanda v. Waghu, AIR 1950 PC 68, the plaintiff brought a suit challenging the validity of a deed of gift relating to land executed on 17th December, 1938 by defendant No, 1, widow of one Amira, in favour of her daughter's son, defendant No. 2, on the ground that the land was ancestral and the gift was contrary to custom. The Subordinate Judge who tried the suit held that the plaintiff had failed to prove the custom alleged by which a widow could not give her deceased husband's property to her daughter's son and that the land was not ancestral. In accordance with these conclusions he dismissed the suit with costs. The appellants appealed to the District Judge who agreed with the findings that the land was not ancestral, but he held that the parties were governed, by custom in the matter of alienation and he sent the case back to the trial Court for decision of a further issue which he framed in these words :

'The land in suit having been found to be non-ancestral, do the collaterals exclude the daughter's son according to the custom of the parties and is the gift, therefore, invalid?'

This issue did not arise on the pleadings. Both sides appealed to the High Court which held that the District Judge had erred in framing a new case for the appellants. In their appeal to the Privy Council the plaintiffs asked for leave to amend the plaint in order to cover the new issue. This was refused with the following observations :

'As already indicated the question embodied in the additional issue was not raised in the pleadings. The appellants founded their claim on the ground that the land was ancestral and it was on that ground that they challenged the right of the widow to make the gift. Not once during the proceedings in the trial Court did they suggest that even if the land was found to be non-ancestral, the widow would still be incompetent to dispose of it. In Eshenchunder Singh v. Shamachurn Bhutto, (1866-67) 11 Moo Ind App 7 at p. 20 (PC), Lord Westbury described it as an absolute necessity that the determination in a cause should be founded upon a case to be found in the pleadings or involved in or consistent with the case thereby made. The course decided upon by the learned District Judge offended against this principle, and their Lordships consider that he was rightly overruled.

In asking the Board to allow the plaint to be amended at this stage attention has been drawn to the provisions of Section 153 and Order 6. Rule 17, Civil P. C. The powers of amendment conferred by the Code are very wide, but they must be exercised in accordance with legal principles, and then Lordships cannot allow an amendment which would involve the setting up of a new case. The judgment of Lord Buckmaster in AIR 1922 PC 249, is directly in point. It was there held that it was not open to a Court under Section 153 and Order 6, Rule 17, to allow an amendment which altered the real matter in controversy between the parties.'

In P. H. Patil v. K. S. Patil, AIR 1957 SC 363, their Lordships of the Supreme Court quoted with approval the following passage from the judgment of Batchelor J. in Kisandas Rupchand v. Rachappa Vithoba, (1909) ILR 33 Bom 644 at pp. 649-650.

'All amendments ought to be allowed which satisfy the two conditions (1) of not working injustice to the other side and (2) 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 amendmentwould 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 ot 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?' and observed in paragraph 11 of the A.I.R. report (1957 SC 363)-

'The same principles, we hold, should apply in the present case. The amendments do not really introduce a new case, and the application filed by the applicant himself showed that he was not taken by surprise; nor did he have to meet a new claim set up for the first time after the expiry of the period of limitation.' Section 153 and Order 6, Rule 1.7 of the Code of Civil Procedure are based on Order 28, Rules 1 and 12 of the Rules of the Supreme Court of England are as follows :

Rule 1 'The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or 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,'

Rule 12. 'The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.'

In Eshelby v. Federated European Bank Ltd., 1932-1 KB 254, Swift J., explained as to what was meant by the words 'for the purpose of determining the real question or issue raised by or depending on the proceedings' as follows :--

'In some cases neither party has very clear and definite view of the real position until the witnesses have been examined and cross-examined, and documents have been criticized in open Court. If the true points at issue are to be determined, and real justice to be done, the pleadings should not be too rigidly adhered to and the Court should make such amendments as are necessary in the proceedings for the real rights of the parties to be determined.'

In the above case a sum of 1500 was payable in 4 instalments 375 on Oct. 22, 1930 and 375 on January 15, 1931 and the other two instalments at subsequent dates. The plaintiff issued the writ on 28-11-30. The action came on for trial before an official referee on March 16, 1931. Afterthe hearing had begun the official referee allowed the plaintiff to amend and add to his claim the amount of the second instalment, which fell due on January 15, 1931, observing that there was no need to bring a new action for this amount. The defendant appealed from the decision of the official referee inter alia on the ground that he had no jurisdiction to allow an amendment of the statement of claim adding a claim which had arisen after the date when the action was begun. Dealing with this question Swift J. observed-

'But here the learned official referee seems to (sic) to have gone much further than amending the proceedings. He has allowed the plaintiff to bring into this action an entirely fresh cause of action arising after this action had been started and he has done that without the consent of the defendants. In Tottenham Local Board of Health v. Lea Conservancy Board, (1886) 2 TLR 410, an action brought to restrain the Lea Conservancy Board from stopping the outlet of the effuents from the sewage works of the plaintiff Board into tne River Lea, it was sought to amend the statement of claim by stating facts relating to some proposed new works, and adding an alternative claim for injunction to restrain the Lea Conservancy Board from interfering until it should be ascertained whether the proposed new works were efficient; Pearson, J., refused the application, and from that there was an

appeal. Cotton, L. J., said he would give no opinion whether the Court had power to allow the proposed amendment, but that if there were power he thought it ought not to be exercised in the circumstances of that case. Bowen, L. J., said that it was not necessary to decide the point, but he had a very strong opinion that the amendmentcould not be allowed inasmuch as it related to a cause of action which did not exist atthe time when the writ was issued. Fry, L. J., did not express any opinion upon the matter at all. So far as I know, Bowen, L. J.'s remarks in that case are the only authority which is to be found in this country, with the exception of an observation of Sir George Jessel in a case to which I will immediately allude upon the point whether or not a writ can be amended so as to include a cause of action which was not in existence at the time when the writ was issued. I can find nothing in the rules which justifies such an amendment. To bring in such a cause of action docs not seem to me to be amending the proceedings at all, it admits a new cause of action and one which could not have been sued upon at the time the writ was issued. An Irish case: Creed v. Creed (1913), 1 Ir Rule 48 nt p. 50 -- seems directly to decide that such an amendment cannot be made. The headnote is that 'A, B, believing that X died intestate took out administration intestate to him, and commenced an action as such administrator against C. D. C. D., who had been aware that X left a will, appointing him executor, declared that fact for the first time in his defence, and thereupon A, B, took out administration with the will annexed (C, D, having renounced), and sought to amend the pleadings accordingly. Held, that A, B's application must be refused as at the date of the issue of the writ she had no title to sue.' Barton, J., said: 'I am of opinion that this summons should be dismissed with cost, as the plaintiff's letters of administration were void 'ab initio'; and she had no title to sue when the action was brought.' Here there was no right on the part of the plaintiff in this action to sue for the second instalment when the action was brought, and (1913) 1 Ir Rule 48 at p. 50 -- is helpful in the absence of any express rule on the matter in our own courts or in our own Rules of procedure, as showing that such a cause of action cannot be added to the writ here'.

Swift, J., then dealt with the judgment of Jessel, M. R. given in Original Hartlepool Collieries Co. v. Cibb, (1877) 5 Ch D 713. After giving a quotation from the learned Master of the Roll's judgment. Swift, J., said that Jessel, M. R. had made this

observation at page 719 :

'By the leave of the Court you can do anything. That is another matter; because the Court can give leave to amend on both sides, and can easily amend the writ. There I respectfully differ. It is not correct to say 'By leave of the Court you can do anything.' It is certain that by leave of the Court you cannot do everything. The Court is limited in giving its leave to the powers which are conferred upon it by the Rules and by the statute under which those Rules are made, and I cannot see how, without the consent of the parties, the Court can so amend a writ as completely to change the cause of action so as to bring in a cause of action which was non-existent at the time the writ was originally issued.'

This case went up in appeal. The judgment of the Court of appeal is given in the same volume of the Report (1932) I KB and begins at p. 423, At p. 429, Scrutton, L. J., said:

'When the writ was issued only the first instalment was due, but when the case came on for hearing the second instalment had fallen due. The Official Referee allowed the plaintiff to amend the writ by adding to his claim the second instalment. This was, I think, contrary to the universal practice.'

It will thus be seen that the Court has no power either under Section 153 or under Order 6, Rule 17, Civil Procedure Code to allow an amendment of the plaint so as to include a cause of action which had not accru-ed oil the date of the institution of the suit. It has however been hold in some decisions that Courts are not precluded from taking cognizance of facts that occur since the laying of the action and granting relief to the parties on the basis of the altered situation underexceptional circumstances in the exercise of their inherent powers under Section 151, Civil Procedure Code.

10. In Appalasuri v. Kannamma Nayu-ralu, AIR 1926 Mad 6 one of two Hindu widows brought a suit for partition of her husband's property and possession of a share against the co-widow (defendant No. 1) and defendant No. 2 to whom a part of the property was sold by defendant No. 1. The suit was decreed by the trial Court. On appeal it was remanded for fresh trial and a decree was again passed in

favour of the plaintiff. In the interval defendant No. 1 died. There was again an appeal. The plaintiff prayed for amendment of the plaint and prayed for possession of the entire estate as a result of defendant No. 1's death. The amendment was allowed. This amendment was upheld by the Division Bench with the following observations :--

'That events that happened, even after the filing of the suit -- including those that add to the title of the plaintiff -- may be taken notice of has been established by several cases ..... Specially in partition suits, it will be very inconvenient, if the general principle of confining the suit to the cause of action, in the plaint, is rigidly adhered to, as can be seen from a simple case, where A filed a suit against his two brothers for partition and seeks to recover a third share, and during the pendency, one of the brothers dies, to say that the plaintiff cannot be awarded half, instead of a third, and that the decree should be limited to a one third, he being compelled to file another suit for one-sixth is to be technical with a vengeance ..... No doubt, the discretion ought not to be exercised, when there is a change of jurisdiction, when there is a great delay in making the application, and may not he exercised if a fresh enquiry on other facts is necessary. But when these features do not exist, in our opinion the amendment ought as a general rule, to be allowed, to avoid multiplicity of proceedings. In all such cases, the only question of consequence is one of Court-fees, a matter with which the parties are not concerned and the opposite party is not deprived of any defence, which is obviously open to him.'

It will thus be seen that no amendment can be allowed if a fresh enquiry on other facts is necessary.

11. The above decision was followed in A. N. Shah v. A. Annapurnamma, AIR 1959 Andh Pra 9. In this case a suit was filed for the eviction of the defendant on the ground of forfeiture of lease for non-payment of rent. During the pendency of the suit the term of the lease expired and the plaintiff applied for the amendment of the plaint adding a fresh ground entitling her to recover possession. This was allowed as the principles laid down in AIR 1926 Mad 6 were applicable, there being no necessityof a fresh enquiry on any fact. The decision in 1932-1 KB 254

was distinguished on the ground that the facts in it did not fall within the exceptions laid down by a series of Madras decisions referred to in A. N. Shah's case, AIR 1959 Andh Pra 9.

12. In P. Manga Rao v. C. Kishan Rao, ILR (1963) Andh Pra 931 = (AIR 1965 Andh Pra 98) a decree was passed against the plaintiff who instituted a suit for contribution against the defendant without making payment of the amount due under the decree. It was however not disputed that during the pendency of the suit full satisfaction of the decree was recorded in execution. A certified copy of the execution proceedings was filed. There was no allegation that satisfaction was recorded by collusion, between the decree-holder and the plaintiff. In these circumstances relief was afforded to the plaintiff. The following observations were made :--

'It is beyond the pale of controversy that a suit must be tried in all its stages on the cause of action that had arisen before the institution of the suit. This basic principle cannot be ignored in the decision of the question whether a suit should be decreed or not. However, Courts are not precluded from taking cognizance of facts that occur since the laying of the action and granting relief to the parties on the basis of the altered situation, under exceptional circumstances. This is an inherent power which a Court is required to exercise if it is conceived to advance the cause of justice. The power to give adequate relief to suitors in suitable cases in view of the changed circumstances after the filing of the suit cannot, therefore, be contested. This power should be exercised if it tends to shorten litigation and best subserves the ends of justice.'

13. In Ram Dayal v. Maji Devdiji of Riyan, ILR (1953) 3 Raj 866 the suit for recovery of money was premature on the date on which it was filed. But cause of action to bring the suit accrued to the plaintiff during the pendency of it. It was contended on behalf of the defendant before the Division Bench that the suit should be dismissed as it was filed prematurely. On the other hand what was urged on behalf of the plaintiff was as the suit matured during the course of the trial and had been decreed by the trial court the decree should be maintained. The learned Judges observed as follows:

'As we understand the position, the general rule is that the rights of parties to a suit must be regulated with reference to their state at the date of the institution of the suit and a suit must be tried in all its stages on the cause of action as existed on the date of its commencement, and the relief claimed in the suit must be confined to matters existing at that date. See AIR 1945 PC 62. Although this is settled law as a general rule, it is equally settled that there are exceptions to this rule and it is open to a court in excep-tional cases to take into consideration events which may have taken place subsequent to the filing of the suit and grant relief on their basis where the relief as claimed have become inappropriate by reason of altered circumstances and where this may appear to be necessary to shorten unnecessary litigation between the parties or tend to subserve the substantial interests of justice.'

After referring to the special circumstances of the case which were cited before them in which the inherent power of the Court was exercised their Lordships considered whether the case before them could be taken properly to fall within the exception to the general principle referred to above. They carne to the finding that the case was one in which having regard to its special circumstances they should exercise their discretion in favour of the plaintiff and take into consideration events which took place subsequent to the filing of the suit and treat the case on that footing although the suit was premature on the date it was filed.

14. It will thus be seen that in exception-circumstances the courts may allow an amendment of the plaint in exercise of their inherent power us to include a cause of action which had not accrued on the date of the suit provided the following conditions laid down in AIR 1926 Mad 6 are satisfied:

(1) There is no change of jurisdiction.

(2) The application is not greatly belated.

(3) No fresh enquiry on facts is necessary, and

(4) the opposite party is not deprived of any defence which would be open to it if a fresh suit on the new cause of action were to be brought.

In AIR 1959 Andh Pra 9 there is a specific reference to these conditions and 1932-1 KB 254 was distinguished on the ground that these conditions were not satisfied, a fresh enquiry being necessary on the question as to whether or not the second instalment was paid. In ILR (1963) Andli Pra 931 = (AIR 1965 Andh Pra 98) and ILR (1953) 3 Raj 886 also these conditions were all satisfied although there is no specific mention of them.

15. In two unreported cases Gopi Chand v. Khel Shanker, (Civil Revn. No. 191 of 1966, D/- 16-10-1968 (Raj) and Urnardeen v. Chhagan Lal, (Civil Revn. No. 113 of 1967 D/- 18-10-1968 (Raj)) it was held by me that the trial courts had committed material irregularity in allowing similar amendments of the plaints. These revision applications were not seriously contested before me on behalf of the respondents and the reasons for the decisions given in them are not correct. The reason given in present revision applications are however fully applicable to those cases and the orders allowing amendments were rightly set aside,

16. In the two cases before me there is no special circumstance justifying the exercise of the inherent power of the Court. Onthe other hand in both these cases the factthat there was a default after the institution of the suit is seriously disputed on behalf of the defendants and a fresh enquiry would be necessary if the plaints are allowed to bel amended. Further amendment applications in both the cases are belated. In Civil Revi-sion No. 469/1967 the default is alleged to have taken place on 24-5-66, but the amendment application was made only on 3-4-67. In Civil Revision No. 152/1968 the default is alleged to have taken place in 1962, but the amendment application was made in 1967. The trial courts therefore committed a material irregularity in allowing the amendments. It was incumbent on the trial courts to apply their minds to the case law which was shown to them on behalf of the parties and state their reasons for departing from the general principle before allowing the amendments.

17. On behalf of the applicants it was also contended that the amendments if allowed were likely to result in injustice to them inasmuch as they might be deprived of the right conferred on the tenant under Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 as amended by Act No. 12 of

1965 of having the ground of default struck off by depositing rent, interest and costs on the first day of hearing. It is argued that the amendment of the plaint relates back to the date of the institution of the suit and the first day of hearing referred to in the sub-section has already passed. It is unnecessary for me to express any opinion on this question as I have already held on other grounds that the trial courts committed a material irregularity in allowing the amendments.

18. I accordingly allow the revision applications, and set aside the orders of the trial court allowing the amendments.

19. In Civil Revision No. 469/1967 the plaintiff contested the revision application. The defendant is entitled to recover costs of this revision application from the plaintiff.

20. In Civil Revision No. 152 of 1968 the revision application was not contested on behalf of the plaintiffs. I accordingly leave the parties to bear their own costs of this revision application.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com