
(1994) 11 MAD CK 0103
In the Madras High Court

A.B.T. Parcel Service

APPELLANT

Vs

C.R. Vasudevan

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Citation : (1995) 1 MLJ 129

Hon'ble Judges : Ar. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—The above revision has been filed by the defendant in the suit against the order of the Second Additional Subordinate Judge, Coimbatore, dated 27.3.1989 in I.A. No. 370 of 1988 in O.S. No. 368 of 1985 allowing that application filed by the plaintiff/ respondent herein for amendment of the plaint.

2. The respondent originally filed the suit against the petitioner for the following reliefs:

(a) For a declaration that the plaintiff/ respondent is entitled to hold the office of Manager of the Lost Property and Stationery Department of the defendant/ petitioner concern at Coimbatore or any other managerial post of Grade I:

(b) Consequent upon such a declaration restraining the defendant from enforcing its order of reversion dated 16.2.1985;

(c) Directing the defendant to pay the plaintiff the sum of Rs. 14,400 with subsequent interests:

(d) Directing the defendant to pay the plaintiff the costs of this suit; and

(e) Granting to the plaintiff such further or other reliefs as this Hon"ble Court may deem fit and proper in the circumstances of the case.

3. The petitioner filed written statement. According to the respondent, by letter dated 17.7.1985, the petitioner wrote to him that he must obey the order dated 16.2.1985, which is the subject matter of the suit. Thereafter, the management

kept quiet for nearly 21/2 years. But, on 8.1.1988, the petitioner issued a show cause notice asking the respondent to show cause as to why he should not be treated as having abandoned the service under the petitioner. The respondent by his letter dated 19.1.1988 submitted his explanation to the show cause notice setting forth his contention that he has no intention of abandoning his employment nor has he abandoned his employment under the petitioner. However, by the communication dated 15.2.1988, the Chief Executive of the petitioner held that the respondent has voluntarily abandoned the service and asked him to have his accounts settled without any delay. According to the respondent, the above action of the petitioner during the pendency of the suit, especially when the orders of reversion and transfer are being questioned, is mala fide. Therefore, the respondent filed I.A. No. 370 of 1988 to permit him to amend the plaint as indicated in the petition.

4. The petitioner filed a counter statement opposing the amendment. According to them the order dated 15.2.1988 is an independent one resulting from the respondent's failure to join duty even after the expiry of leave without any explanation. When the respondent is no more in the service of the petitioner, he is not entitled to any relief regarding his employment. It is further contended that the new relief sought for by way of amendment will amount to directing the petitioner to provide the respondent employment, which, according to them, is impermissible in law and such a relief cannot be granted. It is then contended that the relief asked for by way of amendment is a new and fresh cause of action, which is also foreign to the scope of the suit and will also alter the nature of the suit. Therefore, they prayed for dismissal of the application.

5. The learned Second Additional Sub Judge, on a consideration of the materials placed before him, allowed the application for amendment. According to the learned trial Judge, the order of the petitioner dated 15.2.1988 is only a resultant order which has arisen from the situation which is the subject-matter of the suit, and therefore, there is no harm in allowing the amendment application. The learned trial Judge has further held that if the respondent is driven to the necessity of filing a fresh suit for such relief, it will not only end in multiplicity of proceedings but will also go to complicate the matter, as no complete just finding could be arrived at in either of the suits without referring to the subject matter of one suit in another. Aggrieved by the above order, the defendant has filed the above revision in this Court.

6. I have heard Mr. Jawahar for the petitioner and Mr. N. Varadharajan for the respondent. According to Mr. Jawahar, the learned trial Judge having held that the amendment sought for giving a fresh cause of action, erred in allowing the amendment petition. According to him, the amendment petition relates to an entirely different cause of action and therefore cannot be clubbed along with the present suit. Mr. N. Varadharajan, learned Counsel for the respondent, reiterated the contentions raised by the respondent before the trial court and also cited the decisions reported in Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha

and Others, and Municipal Commissioners of Begusarai Municipality Vs. Sri Ram Baran Singh, .

7. In the first decision cited by the learned Counsel for the respondent, the Supreme Court has held as follows:

Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a court (including a court of appeal) to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally had (1) by reason of subsequent change of circumstances become inappropriate, or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties.

In the second cited decision, the Patna High Court has held as follows:

The original relief sought was for declaring the suspension order as illegal and for an injunction to restrain the defendant from proceeding with the proposed departmental enquiry and from dismissing him from service. An interim order of injunction ultimately failed and thereupon an order of dismissal was passed. In such circumstances the amendment sought for a further relief to the effect that the dismissal order was also illegal, mala fide and without jurisdiction should be allowed. The grant of original relief had become inappropriate for deciding the real controversy between the parties.

8. It is seen from the judgment of the Supreme Court first cited that it is open to a court, including a court of appeal, to take notice of events which had happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally had by reason of subsequent change of circumstances become inappropriate or where it is necessary to take notice of the changed circumstances in order to shorten the litigation or to do complete justice between the parties. The above principle laid down by the Supreme Court squarely applies to the facts of the case on hand. In the instant case, it is contended by the petitioner that the respondent did not obey the order of the management dated 16.2.1985 which is the subject matter of the suit. On 8.1.1988, the petitioner issued a show cause notice asking the respondent to show cause why he should not be treated as having abandoned the service under the petitioner. On 19.1.1988, the respondent submitted his explanation to the notice setting forth his contention that he has no intention of abandoning his employment, nor has he abandoned the employment under the petitioner. However, on 15.2.1988, the Chief Executive of the petitioner had held that the respondent had voluntarily abandoned the service and asked him to have his accounts settled without delay. In my opinion, as pointed out by the Apex Court, it is open to this Court to take notice of the events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances. I am of the view that the respondent's application for

amendment should be ordered in view of the changed circumstances and in order to shorten the litigation and also to do complete justice between the parties. Therefore, the learned Sub Judge has rightly allowed the application for amendment and taken note of the subsequent events. As pointed out in a number of decisions of this Court and that of the Apex Court, it is open to the court to take note of subsequent events and mould the relief accordingly. In my opinion, the relief now asked for by the respondent by way of amendment is not a new and fresh cause of action as contended by the learned Counsel for the petitioner. It is neither foreign to the scope of the suit nor will alter the nature of the suit as contended by the learned Counsel for the petitioner. The order of the court below is in order and does not suffer from any illegality or infirmity and as such, no interference is called for.

9. For the foregoing reasons, the civil revision petition fails and is accordingly dismissed. No order as to costs.