
(1998) 06 KAR CK 0005

In the Karnataka High Court

Case No : Civil Revision Petition No. 3868 of 1997

Annappa

APPELLANT

Vs

D.S. Sugandharaj and Others

RESPONDENT

Date of Decision : 17-06-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 50

Citation : (1999) 1 CivCC 450 : (1998) ILR (Kar) 2249 : (1998) 6 KarLJ 171

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri B. Rudragowda, for the Appellant; Sri Jayakumar S. Patil, for the Respondent

Judgement

1. The petition is taken up with the consent of parties.
2. The petitioner is the plaintiff in O.S. No. 969 of 1989 on the file of the Principal Civil Judge, Junior Division, Shimoga. Admittedly, the suit was filed in the year 1989. The petitioner sought for amendment of the plaint in LA. No. XVIII. The Trial Court dismissed the application for amendment on the ground that it was belated. Aggrieved by the order of the Trial Court in LA. No. XVIII, the petitioner-plaintiff has preferred this CRP.
3. The plaintiff filed a suit for declaration to the effect that the sale deeds executed in favour of Sugandaraj Shetty and Hanumappa is not binding upon the plaintiff and prayed for cancellation of the sale deeds and for consequential injunction restraining the defendants from interfering with the plaintiffs possession. It was submitted that by mistake the kharab portion of 1 acre 8 guntas was not included in the prayer of the plaint and also in the schedule. The kharab portion of 1 acre 8 guntas was in Sy. No. 122 and the same survey number was divided into 122/1 and 122/2. The said kharab portion comes in Sy. No. 122/1. It was submitted that reference to this land consisting of 1 acre 8 guntas in Sy. No. 122/1 was clearly mentioned in the plaint at Paragraph 5. However, it was not included in the schedule by oversight. It is in these

circumstances, the petitioner sought to amend the plaint.

4. The learned Counsel for the respondent 6, Mr. Jayakumar S. Patil submitted that the amendment of the plaint has been sought for after elapse of nine years. He further submitted that the matter is stated for arguments and the whole case will have to be reopened if the amendment is allowed. He further submitted that the reasons assigned by the Trial Court in declining to amend the plaint is perfectly in order and does not require interference while exercising powers u/s 115 of the CPC.

5. No doubt the amendment sought for has come after a lapse of nine years. However, it has to be borne in mind that the amendment sought for has already been mentioned in the plaint and by sheer oversight the plaintiff did not correlate the averments in the plaint schedule.

6. The learned Counsel for the petitioner relied on a Judgment of the Supreme Court in *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, . The Supreme Court in the said case has permitted the amendment of the plaint at the stage of an appeal as denial of such amendment would only cause multiplicity of proceedings and injustice. The Supreme Court pronounced on the subject in the following words:--

"28. This brings us to the general proposition whether the High Court should have allowed the amendment late as it was. The plaintiff is right that the application was made literally on the eve of the judgment. This argument is really based on delay and laches. The application has not been made for the first time in this Court when other consideration might have applied. It was made in the High Court after the argument based on the documents on record was urged. This argument was also urged in the Court of Trial. The contention of the Society was thus present on both the occasions and it would have been better if the Society was directed to amend the pleadings before the argument was heard. The omission, however, remained.

29. Now it is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also appeals. Indeed the appeal being a continuation of the suit new pleas are not considered. If circumstances change they can form the subject of some other proceedings but need not ordinarily be considered in the appeal. To this proposition there, are a few exceptions. Sometimes it happens that the original relief claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases Courts may allow an amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuity of action the Courts allow an amendment. The practice of the Courts is very adequately summarized in *Ram Eaton Sabu v Mohant Sahu* , *Mookerjee and Holmwood, JJ.*, have given the kind of changed circumstances which the Courts usually take notice, with illustrations from decided cases. The judgment in that case has been consistently followed in India. In *Raicharan*

Mandal v Biswanath Mandal, other cases are to be found in which subsequent events were noticed. The same view was taken by the Federal Court in Lachmeshwar Prasad v Keshwar Lal , following the dictum of Hughes, C.J. in Patterson v State of Alabama. In Surinder Kumar v Gian Chand , this Court also took subsequent events into account and approved of the case of the Federal Court. In view of these decisions it is hardly necessary to cite further authorities.

30. Mr. Gupte on behalf of the plaintiff has strenuously opposed the request for amendment. His objection is mainly based on the ground of delay and laches. He relies on Gajadhar Mahton v Ambika Prasad, Shanmuga Rajeswara Setkupathi v Chidambaran Chettiar and Kanda v Waghu, in which the judicial Committee declined amendment before it. These cases were different. In the first case the Judicial Committee held that it was within its discretion to allow amendment but did not feel compelled to exercise the discretion, In the second case the amendment was no doubt refused because it was asked for at the last moment but the real reason was that under it a relief of a wide and exceptional nature was granted. The point was so intricate that it required careful and timely pleading and a careful trial. In the last case the Judicial Committee relying on the leading case of Ma Shwe Mya v Maung Mo Hnaung, held that it was not open to allow an amendment of the plaint to cover a new issue which involved setting up a new case.

31. As against the cases, this Court in I.J. Leach and Company v Jardine Skinner and Company, Pirgonda Hongonda Patil v Kalgonda Shidgonda Patil and A.K. Gupta and Sons v Damodar Valley Corporation , allowed amendments when a fresh claim would have been time-barred. The cases of this Court cannot be said to be directly in point. They do furnish a guide that amendment is a discretionary matter and although amendment at a late stage is not to be granted as a matter of course, the Court must bear in favour of doing full and complete justice in the case where the party against whom amendment is to be allowed can be compensated by costs or otherwise. Also the amendment must be one which does not open the case or take the opposite party by surprise.

32. In the present case the amendment sought was not outside the suit. In fact Issue No. 2 could have easily covered it if a proper plea had been raised. " The Society was perhaps under an impression that the fresh Kuthakapattom would be considered and the Trial Judge had also said that the argument could not be shut out. Although it is not possible to say that parties went to trial in regard to the fresh Kuthakapattom, it cannot be gainsaid that the plaintiff had himself caused all the documents necessary for the plea to be brought on the record of the case. No doubt plaintiff tried to implead Government with a view to obtaining an injunction but as no notice u/s 50 of the CPC was given, this was under an exercise in futility. But the Society was under no disability except its own inaction. If it had made a timely request it would have been granted.

33. Thus it is a question of the delay and laches on the part of the Society. Insofar as the Court was concerned, the amendment would not have unduly

prolonged litigation, on the other hand, it would have cut it short. Without the amendment another suit based on the second Kuthakapattom is inevitable. As we have shown above there is good authority in support of the proposition that subsequent events may be taken note of if they tend to reduce litigation. This is not one of those cases in which there is a likelihood of prolonged litigation after remand or in which a new case will begin. The amendment will prima facie allow the society to show to the Court that in addition to possession it has also title. This will enable the Court to do complete justice, if the plea is found good, without the parties having to go to another trial".

7. I have carefully considered the submissions of the learned Counsel for the petitioner and the learned Counsel for the respondent 6. I feel that since there has been an interim stay of the proceedings before the Trial Court during the pendency of the CRP and taking into account that the CRP has been pending since 1997, it would be better for both parties if the amendment is allowed, so that there will be an opportunity both to plaintiff and the defendant to put forward their case before the Trial Court. The alternative would be to drive the plaintiff to file a separate suit, which in the facts and circumstances of the case, would only add to the litigation.

8. In that view of the matter, the CRP stands allowed. The order passed in LA. No. XVIII in O.S. No. 969 of 1989 on the file of the Principal Civil Judge, Junior Division, Shimoga, is set aside and the application for amendment is allowed. However, the CRP will have to be allowed on terms both in this Court as well as in the Trial Court. The petitioner-plaintiff is directed to pay a sum of Rs. 500/- as costs in the High Court and the sum of Rs. 1,000/- in the Trial Court. The amounts shall be paid to their respective Counsel on obtaining a receipt from the Counsel.

9. There will also be a direction directing the Trial Court to dispose of the trial after carrying out the amendment as expeditiously as possible after giving opportunity for the defendants to file additional written statement, if necessary. The Trial Court shall dispose of the trial on or before 31st of December, 1998. Both parties have agreed to co-operate in the expedite conduct of the trial.

10. Both parties are directed to appear before the Trial Court in the first week of July 1998 with the copy of this order to enable the Trial Court to take up the matter further and dispose of matter in accordance with law. No order as to costs.