

(1996) 09 KAR CK 0068
In the Karnataka High Court
Case No : CRP. 1650 of 1996

Hanumanthappa and Another	Vs	APPELLANT
Chandrashekarappa and Others		RESPONDENT

Date of Decision : 05-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A

Citation : (1997) 3 CivCC 695 : (1996) ILR (Kar) 3628 : (1996) 7 KarLJ 645

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Mohan Shantanagoudar, for the Appellant; S.V. Bhat, for Udaya Holla, for R-1 to 11, for the Respondent

Final Decision : Dismissed

Judgement

Mohamed Anwar, J.—The petitioners herein were the defendants in O.S. 10/1995 in the Court of the I Additional Civil Judge & C.J.M. at Dharwad and the respondents were the plaintiffs therein".

2. The facts giving rise to this revision are as under:-

Initially, the plaintiffs had filed their suit against petitioners in the Court of the Munsiff at Navalgund which was registered in O.S.158/ 94 on its file. That suit was filed for the reliefs of declaration and permanent injunction against defendants. A preliminary issue had arisen from the respective pleadings of the parties in regard to pecuniary jurisdiction of the Munsiff Court at Navalgund to try the said suit. That issue was tried by the Learned Munsiff and his finding thereon was recorded by his order dated 23.1.1995, holding that the subject matter of the suit exceeded the limits of its pecuniary jurisdiction. Accordingly, he ordered return of the plaint to the petitioner under Order 7 Rule 10 C.P.C. for presentation in proper Court viz.. Court of the Civil Judge at Dharwad.

3. On the said order of the Munsiff Court at Navalgund, the plaint was taken out by the plaintiff from that Court and was represented in the said proper Court i.e.

Court of the Civil Judge at Dharwad and the same came to be registered in O.S. 10/95 on its file. The petitioners/defendants entered appearance in the said O.S.No. 10/95 in the Court below. Thereafter, IA-6 was filed by them raising an objection that the plaint of respondents/plaintiffs may be rejected since it was altered considerably from the original plaint which was earlier filed by them in the said O.S.No. 158/94 in the Court of the Munsiff at Navalgund. The Learned Trial Judge after, hearing both sides passed the impugned order dated March 16, 1996 rejecting the petitioners' IA-6 holding that it was entirely in the discretion of the plaintiffs either to alter or not to alter their plaint before re-presenting the same in proper Court, subject to proper valuation of the suit and payment of the requisite Court fee. In support of this view, the learned Civil Judge relied on a decision of the High Court of Kerala in Nanikutty Amma Devaki Amma and Others Vs. Krishnan Kochunarayanan Nair and Others, . So holding the rejected petitioner's said IA. In this revision the defendants have challenged the said Trial Court's order.

4. Mr. Mohan Shantanagoudar, Learned Counsel for petitioners, assailed the validity of the Trial Court submitting that he was bound to allow petitioners' IA-6 and reject the respondents' altered plaint filed before it, since the latter were not entitled to bring about any change in their plaint before it was presented before the Court below.

5. For proper appreciation of the rival contentions canvassed by both sides, it is necessary to consider the intent and purport of Order 7 Rule 10 C.P.C. This material provision reads:

"Rule 10(1) : Subject to the provisions of Rule 10-A a plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted"

Rule 10(2): On returning the plaint the Judge shall endorse thereon the date of its presentation and return, the same of the party presenting it and a brief statement of the reasons for returning it".

6. The related Rule 10A of Order 7 C.P.C. provides for the procedure to be followed by the plaintiffs on a direction of the Court without jurisdiction to return the plaint under Order 7 Rule 10 C.P.C. for its presentation to the proper Court. This provision gives two options to the plaintiff in such a situation. First option is that he can take back the plaint from the Court having no jurisdiction to entertain the same to present it in a proper Court; the next option left open to him is that, without taking back the plaint from the former Court, he may choose to challenge its said order before the Appellate Court. Admittedly, in the instant case, the plaintiffs have not chosen the alternate option of challenging the said order of the Munsiff Court at Navalgund before the Appellate Court. On the other hand, they have exercised the first option of taking back the plaint from that Court pursuant to its said order for the purpose of its representation in proper Court i.e. Civil Judge's Court at Dharward. Therefore, the Short point that arises

for consideration is : Whether the respondents/plaintiffs were bound to present their original plaint unaltered and unamended before the said proper Court or they were entitled to make such alterations and amendment therein as they thought fit before it is filed in that Court. The plain language of Order 7 Rule 10 C.P.C. makes it dear that this provision does not prohibit the plaintiff, expressly or by implication, from effecting any change in the plaint after it was taken back from the incompetent court pursuant to its order directing return thereof and before the same is re-presented in the proper Court. There is no authority brought to my notice by the Learned Counsel for the petitioner laying down the proposition that a plaintiff is not entitled to effect any change in the pleadings in his plaint after it was returned to him by the former Court and before it was filed in the latter Court. Representation of plaint by the plaintiff in proper Court, in effect, is to bring an action against the defendants on the basis of the cause complained against him. In other words it means regular institution and commencement of suit against defendants. The suit against a defendant commences on presentation of plaint by the plaintiff before the proper Court, i.e. the Court having jurisdiction to entertain and try the suit.

7. Therefore, in the eye of law filing of the plaint before the Court which has no jurisdiction to entertain the same is no commencement of any legal action against the defendants. As such, presentation of plaint before incompetent Court cannot be construed and treated as continuation of the suit proceeding from that Court to the proper Court in which the plaint is re-presented. And such being the legal position, there cannot be any valid reason why the plaintiff cannot alter or change his plaint which is returned by the Court without jurisdiction, before it is presented to proper Court, subject of course to the law of limitation, proper valuation of the suit and payment of requisite Court fee on the plaint. Therefore, I find no legal force in the contentions of the petitioners' Learned Counsel that the proper Court could not have entertained and it lacks competence to entertain the altered or amended plaint of the respondents/plaintiffs.

8. Hence the revision is devoid of merit and the petition is liable to be dismissed.

Petition is accordingly dismissed. Parties to bear their own cost.