

(1978) 08 DEL CK 0033

In the Delhi High Court

Case No : I.A. No. 3929 of 1977 in Suit No. 127 of 1976

Hindustan Timber Syndicate

APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 30-08-1978

Acts Referred:

Citation : (1978) 08 DEL CK 0033

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : R.K. Makhija and D.P. Sharma, for the Appellant; V.P. Chowdhary, for the Respondent

Judgement

D.K. Kapur, J.—This is an application for amendment of the plaint filed in respect of a suit which is for declaration simpliciter. The amendment sought to be introduced is in relation to the relief clause alone. It is said that not only a declaration but also a decree for Rs. 1,00,000 should be passed in favor of the plaintiff. At first sight, it would appear that the plaintiff had introduced a new case and would be disentitled to get the amendment prayed for. In reply to the application, the defendant has rightly taken a stand that if the amendment introduces a new claim which is now barred by time, then it should be disallowed. The defendant's stand seems to be entirely correct; if it is a new claim, then the plaintiff is late in introducing the amendment; but instead, if it is found that the amendment sought is really an extension of the original claim, then the position may be different.

2. The suit arises in this way. The plaintiff had sued for a declaration that a particular insurance policy covered its saw mills situated in Gangyal (Jammu) and not its saw mills at Kathua. The reason for the filing of the suit was that a fire had taken place at Gangyal in which timber had been destroyed. When the plaintiff claimed on the policy, the insurance company took the stand that this property was not covered by the policy and the policy only covered the property at Kathua. This led the plaintiff to file the suit for a declaration that the policy did

cover the property destroyed in the fire. In the suit, one of the objections by the defendant was that the suit for declaration alone does not lie as other consequential relief was also available to the plaintiff. Now, the plaintiff has applied for an amendment of the plaint by adding the said consequential relief, namely, the claim for Rs. 1,00,000 based on the alleged loss suffered in the fire.

3. The question for consideration is whether such an amendment is to be disallowed on the grounds--(a) that it introduces a new claim, or (b) on the ground that it introduces a relief which if it was the subject-matter of a fresh suit would be barred by time. As far as the first question is concerned, it clearly appears that there is no new claim because the claim is based on the same insurance policy and the same fire which gave rise to the declaration. If there had been no fire, then there was no reason to file the suit. The dispute between the parties actually arose because the insurance company took the stand that the policy did not cover the claim occasioned by the fire. The plaintiff sued only for a declaration and now wants to add the relief of loss which loss has also arisen out of the same policy. Therefore, the claim is really one and the same, i.e., the claim that the policy covers the property which has been burnt in the fire and which has resulted in a particular loss to the plaintiff which has to be met by recourse to the policy. In my view, there is no new claim.

4. The second line, i.e., whether the relief could not be the subject-matter of a fresh suit has led to the argument by the defendant that it is well settled that the amendment cannot be allowed as it would be barred by time if it was the subject-matter of another suit. I fully concur that this is a view which has been taken without any exception in many reported cases. But the principle is not this. It is as laid down by the Supreme Court in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, that what has to be seen is whether the amendment is such that it can be allowed without working injustice to the other side. The court noted that it is an extension of this principle that if the claim is based on a fresh claim, which is time barred, then it would cause injustice that could not be compensated for in the way of costs.

5. The problem, Therefore, in the question of limitation is whether the relief now claimed is in respect of a fresh claim which is barred by time? Obviously, being a claim arising out of the same fire which is the subject-matter of the original claim, it is not a new claim at all. It is, Therefore, not one which can be refused because the suit would be barred by time. The learned counsel for the defendant contests this position, but I think it is now taken for granted. For instance, in the case before the Supreme Court in which the observation was made, the application for amendment was made after the period of limitation had expired. But it was allowed on the ground that it did not introduce a fresh claim. In fact, the approved principle appearing at page 366 of the report is based on the decision in a suit where a suit had been filed both for dissolution of partnership and rendition of accounts, but the subordinate judge found that no partnership was proved. At the appellate stage, the plaintiff abandoned the plea of

partnership and prayed for relief by adding the relief of recovery of Rs. 4,001. It was held that though the claim was barred by time, it could rightly be allowed because it did not introduce a new claim. Similarly, in another judgment of the Supreme Court, *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, , the amendment was allowed by the Supreme Court to permit the change of a suit based on conversion into a suit for breach of the performance for non-delivery of goods. Although noting that a suit based on such a cause of action would be wholly barred by time, the court held :

" We are of opinion that the justice of the case requires that the amendment should be granted."

6. There are many examples of such amendments in reported cases. The principle which emerges is as follows : If the amendment is such that it introduces some new cause of action or a new claim, then it should be disallowed. But, if it merely alters or specifies or clarifies a particular claim already made within time, then it should be allowed even though the amendment is sought after time. Another example of such a case has been brought to my notice in *Bishan Sarup and Bros. and Another Vs. Tara Wanti and Another*, , wherein the suit was brought for rendition of accounts, but was sought to be converted into a suit for recovery of a particular amount. The court observed that as the claim was based on the same cause of action, the mere particularisation of the claim based on the same cause of action could not be disallowed when brought after limitation. Another example is *Sehdev Seth v. Smt. Vidya Wati Seth* AIR 1974 Delhi 234 , which was one for declaration, but the plaintiff introduced a relief for possession based on title. This court held that the amendment could be allowed even though beyond time on the ground that it was based on the same cause of action, i.e., the title. On the other hand, in another judgment, *Prem Das Chela Bhola Dass Vs. Joti Pershad*, , it was held that the amendment claimed should not be allowed to convert a suit for ejectment into a suit for possession when the same was barred by time. The new cause of action was based on a will said to have been left by one Mahant Bhola Dass. Being a new cause of action the amendment was disallowed when introduced after the period of limitation.

7. The principle for allowing such amendments has been clearly laid down by the Privy Council in AIR 1922 249 (Privy Council) , and universally followed, that all amendments should be allowed as far as possible and only amendments are to be disallowed where injustice would result which cannot be compensated by costs. In that case, a new claim based on a different cause of action was sought to be introduced at a late stage, but the amendment was disallowed up to the Privy Council. The observations of the court are (p. 250):

" All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is, Therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but none the less no power has yet been given to enable one distinct cause of action to be substituted

for another, nor to change, by means of amendment, the subject-matter of the suit."

8. In the present case, the simple question to be asked is : Why has the plaintiff instituted the suit ? Obviously, to recover an amount allegedly due on an insurance policy effected in respect of a particular property with the defendant. The stand taken by the defendant that this property is not covered by that policy and, Therefore, nothing is payable on the policy has led to the filing of the suit. The suit was not filed for mere show, but was filed with the express or implied purpose of recovering money due on that policy. It would cause grave injustice if the rules of procedure were so used as to thwart the plaintiff's purpose for instituting the suit and to deprive him of getting any relief from the court. Rules of procedure are only intended for bringing about justice between the parties and a procedure which would result in the defeat of justice has to be abandoned, unless it is so overriding that the court is powerless to resist the same. The express or implied purpose of the suit, being the recovery of the amount (if any) due on the policy, is apparent and I cannot see for what other reason the suit could have been filed. It would be merely an extension of the original claim for the plaintiff to claim the actual amount due on the policy, and I reach the conclusion that if the actual purpose of the suit is as introduced by the amendment, then such an amendment should be allowed. It is not a new claim ; it was inherent in the plaint from the very beginning, the claim being the amount due on the policy. For this reason, I come to the conclusion that the amendment claimed cannot be disallowed and it is actually the same claim though clarified. The amendment would require the additional court-fees on the sum of Rs. 1,00,000 and I allow the amendment on payment of Rs. 50 as costs. The amended plaint to be filed by 29th September, 1978. The case to be listed before the Deputy Registrar on that date.