

(1996) 09 KAR CK 0014

In the Karnataka High Court

Case No : Civil Revision Petition No. 5136 of 1992

Holemutt, Chitradurga

APPELLANT

Vs

Ningappa and Others

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 35B

Citation : (1997) 2 KarLJ 272

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. I have heard the learned Advocates on both sides. This is a peculiar civil revision petition where the present petitioners who represents a Mutt, had applied for certain amendments virtually on the eve of the decision of the proceeding. The suit was filed in the year 1983 and the same was fully heard and had reached the stage of arguments in the year 1989. At that stage, a familiar ploy was adopted for purposes of dilating the litigation and an application for amendment was presented. The first part of the proposed amendment was not of much consequence and the defendants agreed to it, the second one was for correction of the number to 229 and it was subsequently discovered that since this was the very number originally mentioned that nothing survives as far as this aspect goes. The third part of the amendment application sought to incorporate the length and breadth of the property in the schedule and the respondents objected to this on the ground that it constitutes introduction of new material at a belated stage. The learned trial Judge upheld this objection and rejected the third part of the amendment application and it is against this order that the present civil revision petition has been filed.

2. Petitioners" learned Advocate submits that this does not constitute introduction of any new material because the petitioners-plaintiffs had already set out in the schedule the description of the property and the boundaries thereof. He states that the incorporation of the length and breadth is only for purposes of better description of the property which would be useful in the event of a decree having to be drawn up. His only submission is that the small details

had been overlooked and that the amendment is nothing more than a formality which will not require any reopening of the proceedings and that the same ought to have been permitted.

3. Respondents' learned Advocate submitted that the petitioners had amended the plaint three times earlier. He submits that the amendment is very late, that no reasons have been given for the delay and more importantly that if it is permitted, that it may require the framing of an additional issue or amendment of the pleadings which would necessitate recalling of the witness etc., and that the law does not permit all these to be done at such a late stage of the proceedings. Under these circumstances, he submits that no interference is called for with the order of the learned trial Judge.

4. The submissions advanced by the respondents' learned Advocate are justified and under normal circumstances, I would have straightaway rejected this civil revision petition. Undoubtedly, the application was filed at a very late stage. No justification has been given for this and what is most serious and shocking is that this is the fourth time that the plaint is being amended. The record also indicates that as many as 24 I.As. had been filed in this proceeding which is an indication to this Court of the manner in which the matter has been conducted. In this background, there would have been every justification to uphold the order passed by the learned trial Judge except for the fact that I find that the trial Judge has got unduly prejudiced and carried away by the background of the case by observing that this constitutes introduction of new material. The legal prohibition arises when a new, different or contradictory case is sought to be made out or if additional and new material is sought to be grafted on to the original cause of action which substantially alters the case. In the present instance, what the learned Judge overlooked was that the proposed amendment is nothing more than a mere formality which does not alter the complexion of the original proceeding at all. Having regard to the dispute that was before the Court where the property has already been fully described, the incorporation of the measurements would hardly make any difference to the case but on the other hand, would facilitate the office in the event of a decree having to be drawn up. Where the amendment is of such a complexion, where it is almost inconsequential and where it will not involve any reopening of the proceedings, to my mind, the Trial Court should have permitted it only because it would facilitate the description of the property.

5. There is another aspect of the matter which has been raised by the respondents' learned Advocate and in respect of which this Court requires to take a very rigorous view. Apart from the fact that the plaint had earlier been amended three times, it has been pointed out that even this application has been made virtually on the eve of the disposal of the suit when the matter was already six years old. Though the petitioners' learned Advocate attempted to put forward certain submissions, his difficulty is that he is bound by the record of the lower Court which itself is silent on the question of any justification for the delay. It has

become customary in situations of this type to sabotage the disposal of the proceeding by making amendment application right on the eve of such disposal in order to not only dilate the litigation but provide scope for appeals and revisions and thereby keep the matter going. This is not only harsh and unjust to the opposite party but constitutes an unfair advantage to the party who has secured the interim relief, apart from which it is contra indicated because it is a wastage of precious judicial time, adds to the length of that proceeding and the number of off-shoot proceedings and the consequential built-up of unnecessary arrears. It is the wrong timing for such applications that requires to be seriously dealt with. There is a rule of finality which applies to pleadings and the civil procedure code requires that both sides are required to initially set out their cases clearly and completely in the pleadings and the amendments are only a special exception provided there is good enough ground. It is true that the law permits amendments even at late stages but that is only if the overwhelming interests of justice so require. Where it is very clear that the motive is oblique and where it becomes clear also that the amendment application is framed in such a way as to bring it within the four corners of law and to create a case whereby the Court may be obliged to grant it, the important aspect which the Court must bear in mind is that appropriate steps must be taken in order to prevent and discourage such tactics and even where the belated amendment applications are granted, that this be done through the award of exemplary costs in order to compensate the consequential harassment to the other side. The concept of doing justice presupposes that out of the two parties before the Court, while making an indulgence or permitting something to one party that it can never be at the expense of the opposite party. One method of compensation would be by awarding exemplary costs in all such cases irrespective of whether the amendment is allowed or not.

6. I have assessed the nature of the litigation, status of the plaintiffs and the length of time that has elapsed prior to the filing of this amendment application. The fact that the plaint was amended three times and that the application was filed virtually when the matter was ready for judgment, are factors that would justify the award of exemplary costs and to my mind, some formula will also have to be laid down by the Court for this purpose. On the facts of this case, to my mind, costs quantified at the rate of Rs. 1,000/- per year would be reasonable and having regard to the fact that the application was filed six years after the institution of the suit, the costs are quantified are Rs. 6,000/-.

7. The order of the Trial Court is partially set aside insofar as the petitioners" are permitted to carry out the requisite amendment with regard to the length and breadth of the property within a period of eight weeks from today. It shall however be condition precedent that the costs quantified at Rs. 6,000/- be deposited in the Trial Court or paid to the respondents" directly prior to carrying out of the amendment. It is also made clear that these costs shall hold good irrespective of whether the petitioners" desire to carry out the amendment or not.

8. The civil revision petition succeeds to this extent and stands disposed of. The petitioners" shall be liable to pay the respondents" costs as far as this proceeding is concerned.