
(1978) 01 OHC CK 0002
In the Orissa High Court
Case No : Civil Revision No. 51 of 1978

Jayanta Kumar Das and Others	Vs	APPELLANT
Pandab Charan Mohanty and Others		RESPONDENT

Date of Decision : 02-01-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17

Citation : (1979) 47 CLT 270

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : S. Mohanty and A.S. Naidu, for the Appellant; M.N. Das, M.M. Das and S.C. Moharana, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—The Defendants in Title Suit No. 112/76, pending in the Court of the Munsif, First Court, Cuttack, have preferred this Civil Revision.

2. On 27-7-1976 the Plaintiffs filed the suit for permanent injunction restraining the Defendants from changing the name of the club from "Jai Hind Club, Jharkata" to "Jai Hind Club, Patana." The written statement in the suit was filed by the Defendants-Petitioners herein, on 20-10-1976. Issues in respect of the cause of action and the pleadings in the suit as at that time were framed on 2-2-1977 and the suit was posted for hearing to 24-2-1977. In the meantime the Plaintiffs preferred an appeal against the order of the trial Court rejecting the Plaintiffs' prayer for a temporary injunction. After the dismissal of the said appeal, the Plaintiffs filed a petition on 29-8-1977 to allow them to incorporate by the amendment of the plaint a prayer for preliminary decree against the Defendants for rendition of accounts of the club. That petition was allowed on 24-9-1977. After the said prayer was allowed, the Defendants filed their 2nd written statement to the amended plaint on 30-9-1977. The suit thereafter was posted to 29-11-1977 for hearing. Again on 9-1-1978 the Plaintiffs filed their second petition for amendment of the plaint, under Order 6, Rule 17, Code of

Civil Procedure, and by the impugned order that petition has been allowed. Hence this revision.

3. On 9-1-1978, when the aforesaid petition for amendment was filed, one Prafulla Kumar Das also filed a petition under Order 1, Rule 10. CPC to be impleaded as a party in the suit. In that petition it is stated that he represents the deity Bhagabat Gosain, and from the averments of the said petition it is quite evident that he wants to be impleaded as a party in this suit mostly to support the Plaintiffs' case in the above-mentioned second petition for amendment of the plaint. This petition of Prafulla Kumar Das has also been allowed separately in the impugned order, and the order to this effect is challenged in Civil Revision No. 52 of 1978. As there is some defect in that Civil Revision and Mr. Mohanty, the learned Counsel for the Petitioner in that Civil Revision, prays for some time to remove that defect, that Civil Revision could not be disposed of today.

4. The amendment which is now sought for by the Plaintiffs and objected to by the Defendant-Petitioners is as follows:

1. That Shri Bhagabat Gosain represented by Prafulla Kumar Das be added as Defendant.

2. A prayer be added to the prayer portion of the plaint to the following effect:

For a decree for a declaration of the right, title and interest of the Plaintiffs as marfatdars of the deity Bhagabat Gosain in respect of the land appertaining to plot No. 1193 appertaining to Khata No. 327 situate in mouza Jharkata and the house standing thereon where the Jai Hind Club, Jharkata is held.

5. Mr. Mohanty submits that if the said amendment is allowed the nature of the original suit and the alleged cause of action on which the original suit has been filed shall be entirely changed and a new suit with entirely a different cause of action shall be allowed to be set up at this stage causing serious prejudice, difficulty, harassment and injustice to the Defendants.

Mr. Das, the learned Counsel for the opposite parties, submits that by allowing the amendment the questions mentioned in the amendment petition can also be decided finally between the parties in the suit without requiring the Plaintiffs or Prafulla Kumar Das to file a suit in respect of the matter requiring decision in connection with the prayer sought to be added by this petition for amendment.

6. From the statement of facts narrated above it is quite clear that the original suit was one for permanent injunction restraining the Defendants from changing the name of the club. Thereafter somehow the plaint has been allowed to be amended enabling matters relating to accounts of the club to be thrashed out in this suit. Again by the present amendment a matter which is absolutely foreign to the cause of action and the prayer in the suit is sought to be introduced. For the purpose of adjudicating the questions relating to the prayer for issuing a permanent injunction restraining the Defendants from changing the name of the club from: "Jai Hind Club, Jharkata" to "Jai Hind Club, Patana" and for rendition of

accounts of the club, the questions as to whether Prafulla Kumar Das is the Marfatdar of the deity Bhagabat Gosain and whether that deity is the owner of the land on which the club house is situated would not arise for consideration or decision either directly or indicatly. The effort of the Plaintiffs in asking for an amendment of the plaint to the above effect is evidently to change the nature and cause of action of the suit in its entirety by the introduction of entirely new facts, cause of action and claims, requiring adjudication of different facts and matter absolutely foreign or irrelevant to the suit in question as it stood before this prayer for amendment was made. Moreover, by this amendment matters relating to the right title and interest of the third person, not so far a party to the suit, in respect of a particular plot of land are sought to be adjudicated in this suit. Decision on the above matter, would not in any way facilitate the final adjudication of the controversies between the parties which are agitated in the suit. If this amendment is allowed, not only the nature and the character of the suit, but also the stance taken by the Plaintiffs in the original suit will be completely changed.

The suit was filed in 1976 and the Defendants by now filed two written statements, the first one in respect of the prayer for permanent injunction and the second one in respect of the amended prayer for rendition of accounts. If again this amendment is allowed, apart from the other grounds mentioned above, the Petitioners shall be forced to file their written statement in respect of this matter without sufficient material in the plaint to this effect. Further, if the amendment is allowed, the suit may suffer from misjoinder of causes of action, and, without doubt, the trial of the case will be delayed, and a simple suit for permanent injunction and rendition of accounts will be converted to a complicated suit for declaration of right, title and interest of a third person in respect of certain matters not required to be adjudicated for deciding the issues involved in the suit as it is at present. All that certainly will cause prejudice and injustice to the Petitioners, the Defendants in the suit.

Considering the above facts, I am of the opinion that in the facts and circumstances of this case the amendment prayed for by the Plaintiffs should not be allowed.

7. The questions which are sought to be agitated in the petition for amendment of the plaint can be agitated in a separate suit if and when filed.

8. Mr. Das contends that merely because an amendment alters the cause of action and introduces entirely a new or inconsistent cause of action amounting virtually to the substitution of a new plaint or a new cause of action, the Court will not refuse to permit the said amendment so long that amounts to depriving the other party of any right which may have accrued in its favour due to lapse of time. In support of this contention of his, he has relied on the following observations made by their Lordships in paragraph 5 of the decision in *Barjure Kaikhosroo Maarfatia Vs. State of Maharashtra*, , reported in:

...if a Plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time.

Their Lordships do not stop by making the above observation, but in continuation of the same they further observe that-

But mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the Plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional Court-fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings,

In paragraph 4, their Lordships have further stated:

... Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accused.

The facts of that case as found from the reported decision are that one of the partners of a firm filed a suit for recovery of money due under a promissory note. Within a short time after the filing of the written statement amendment of the plaint was sought for on the ground that the Plaintiff had "inadvertently omitted certain material facts which are now necessary to incorporate in the point so as to enable the Hon"ble Court to consider and decide the subject matter of the suit in its true prospective and which it is necessary to do in order to meet the ends of justice". In that amendment petition it was explained that the omission consisted of a failure to mention that the Plaintiff-firm had been actually dissolved on a particular date on which a deed of dissolution of the firm was executed. The above observations were made in the context of the facts of

that case and in the perspective of the consideration that either the party or its counsel was inefficient in setting out the cause of action of the suit in the proper and correct manner. But in the facts and circumstances of the present case before me, in my view the law stated by their Lordships in the beginning of paragraph 5 that - "if a Plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it"- is applicable to this case for reasons mentioned above.

9. On the above considerations, the prayer for amendment is rejected and the impugned order, so far as it relates to the same, is set aside.

10. In the result, the Civil Revision is allowed. Hearing fee Rs. 75/-.

Revision allowed.