

(1955) 12 KAR CK 0001
In the Karnataka High Court
Case No : Civil Revision Petn No. 681 of 1954

Jois Bheemasenachar

APPELLANT

Vs

Thekkalakota Basiah Reddy and Others

RESPONDENT

Date of Decision : 19-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17, 53

Citation : (1955) 12 KAR CK 0001

Hon'ble Judges : Padmanabhiah, J

Bench : Single Bench

Advocate : M. Narayana Rao and N. Banga Rao, for the Appellant; M.P. Sowasokhara Rao, for the Respondent

Final Decision : Allowed

Judgement

Padmanabhiah, J.—This is a revision petition filed by the Petitioner - Plaintiff against the order of the District Munsiff, Bellary in O.S. No. dismissing his application under Order 6 Code of Procedure Code for amendment of the plaint.

2. The facts that have given rise to this "on are briefly its under.

3. The Petitioner is the Plaintiff and the Respondent Defendants in the lower Court. The Plaintiff's suit was fur a declaration of his title to the schedule property, for possession of the same and also for recovery of mense profits. The title that the Plaintiff urged In support of his claim was that his father purchased the schedule property from one Srinivasachar.

The Plaintiff's contention now is that he does not acquire title to the schedule property in that way, that such an allegation was made in the plaint due to some bona fide mistake and ignorance on Iris part; that the real source of title which he wants to set up is that the schedule-property actually belonged to his father's maternal grandfather and Srinivasachar as co-owners; that in the division between them the schedule property fell to Plaintiff's father's maternal grandfather's share; that from him the property passed of Plaintiff's father's

mother and then to Plaintiff's father's family; that at the time of division between the Plaintiff's father and his brothers the schedule property fell to Plaintiff's father's share under a registered partition deed dated 14-2-1889 and that after his death the Plaintiff has become entitled to it.

To have necessary amendment, of the plaint in this behalf the Plaintiff filed an application in the lower Court praying that the portion in the plaint setting up the purchase of the schedule property by Ills father, from Srinivasachar may be deleted and that he may be allowed to put forth the new source of title as mentioned above.

4. The Defendants opposed this application on the ground that the application was belated that the amendment, if allowed, would have the effect of converting the plaint into a totally different and inconsistent character. This contention found favour with the learned Munsiff who dismissed the Plaintiffs application, As against that order of dismissal the present revision pillion is preferred.

5. It appears to me that the order of the learned District Munsiff cannot be sustained. As regards the first objection that the application is belated there is no substance. Order 5 Rule 17, CPC provides that the Court may allow either party to alter or amend his pleadings at any stage of the proceedings.

There are instances where an amendment of the pleading has been allowed even at the stage of appeal and also second appeal. The consensus of opinion appears to be that necessary amend-meats should be allowed at any stage of the proceedings provided no injustice is caused to the other side and that the amendment sought for is necessary for the purpose of determining the real question in controversy between the parties.

In the present case the parties have not yet gone to the stage of evidence and, therefore, it cannot be said that the application is belated and epigenous if it is, that is no ground to reject an application of this type.

6. The next point for consideration is whether the amendment sought for is one that should be allowed. It need hardly be stated that the main object of allowing an amendment is to get at the right of the parties and also to avoid multiplicity of suits. No doubt, an amendment of the pleading should be refused only under certain circumstances, namely,

(i) when it is not necessary for the purpose determining the real question in controversy;

(ii) when the amendment, if allowed, has the effect of wholly displacing the Plaintiff's case;

(iii) when the amendment has the effect of taking away any legal right already vested in the other side; and

(iv) when the amendment has the effect of introducing a totally different and inconsistent new case.

In the present case I do not find any such condition for not allowing the amendment.

7. The Plaintiff's suit, as already mentioned, is one for a declaration of his title, for possession and for recovery of mesne. The amendment which he seeks is to substitute a new source of title in place of another source of title which he has urged in the plaint. Instead of claiming the suit schedule, property as the one purchased by his father, he now seeks to amend the plaint to give up that position and introduce a new source of title to the effect that he has inherited the property from his father directly.

In other words, the effect of the amendment would be the shifting of one source of title to another. Even after the amendment is allowed, the parties will continue to be the same; the subject matter will be the same and the relief claimed will also be the same. Such being the case, I cannot accept the contention urged on the side of the Respondents that the effect of following the amendment would be to change the nature of the suit as brought by the Plaintiff.

In this connection, I would also like to refer to a case reported in "Maheebkhan Himmat Khan v. Mohamad Khan Lalkhan" AIR 1954 Nag 54 (A). This is a decision of his Lordship Sinha, P.J. as he (then was) and it is laid down in that case that even the introduction of a new case is no ground for refusing an amendment so long as the Defendants are not prejudiced by the result of the amendment being allowed. His Lordship has also observed that such an amendment will not have the effect of changing the nature of the suit and that such an amendment should be allowed to avoid multiplicity of suits....

8. The case reported in "U Min Sin v. Mamon" AIR 1934 Rang 234 (B) enunciates the pre position that shifting of the source of title can not be a ground for rejection of an amendment.

Again it is found by their Lordships of this Court in the case reported in 37 Mys HCR 519(C). that it is not an inflexible rule of law that an amendment by which it is sought to modify the original cause of action or add another relief founded upon a different cause of action should be disallowed, and that such an amendment should be disallowed only when it will have the effect of converting the suit as originally filed into one of a different character and if by disallowing (sic) such amendment the Defendant is likely to be prejudiced or embarrassed in the trial.

9. On the side of the Defendants, reliance is placed on three cases, viz "Bayabai v. Haji Now Mahomed" 34 Bom 244 (D). 35 Bom 299 (sic) and Seshamma v. Seshadri Ayyangar" AIR 1948 Mad 179 (E). None of these cases seems to support the contentions of the Respondents. It is to be pointed out that the first two cases cannot have any bearing on the facts of the present case in as much as those are cases decided under the old CPC i.e. u/s 53 of the old Code. The proviso to that section reads thus:

Provided that a plaint shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

It is significant to note that the above proviso has been omitted from Order 6, Rule 17 of the Code at 1908, under which the present application has been filed. Therefore, whatever justification the learned Judges had in the two Bombay cases referred to above, those cannot be made applicable when dealing with an application filed under Order 6 Rule 17 of the present Code. Under the present Code powers relating to granting of amendment are conferred on the Courts.¹ In the third case viz, Kommanduru Seshamma and Another Vs. K. Seshadri Ayyangar and Others, the suit was originated based on two specific inconsistent titles. The Plaintiff in the first case claimed the property as the adopted son and in the second alternative as legatee under a will. He sought to introduce by way of amendment a third title, i.e., a title under an earlier will to fall back upon the will which he propounded in the case was for; some reason or other found to be not true.

The amendment sought was so inconsistent and destructive of one another of the relief's that the learned Judges disallowed the amendment. Here the amendment does not propose to introduce a new or inconsistent case as an alternative to the existing one, but the amendment is for demeanor the source of title as put forward in the original plaint, and to substitute in its place another source of title. Therefore, I am of opinion that this case of the Madras High Court also does not support the contention of the Respondent-Plaintiffs.

10. As mentioned before, the trial in the present case has not yet begun. By allowing the amendment the Defendants will not be prejudiced because they will certainly be allowed to file their written statements to the amended plaint and also adduce evidence in support of their contentions. The source of title as now put forth can conveniently be gone into the present suit and the Defendants will not in any way be embarrassed in the trial.

From a perusal of the Application and the affidavit in support of it is seen that the Petitioner was not aware of this new source of title when he filed the application. He appears to have bona fide believed till then that the source he had put forth in the original plaint was the correct one. Therefore, his bona fides in filing this application cannot be questioned. Under those circumstances, I am of opinion that the order of the learned District Munsiff cannot be upheld.

11. In the result, the order of the learned District Munsiff of Bellary is set aside and this revision petition is allowed. I direct the parties to bear their own costs. Revision allowed.