

**(1998) 07 KAR CK 0113**

**In the Karnataka High Court**

**Case No : Civil Revision Petition No. 2878 of 1994**

Lingegowda

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

**Date of Decision : 03-07-1998**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

**Citation :** (1999) 4 CivCC 285 : (1998) 5 KarLJ 440

**Hon'ble Judges :** Hari Nath Tilhari, J

**Bench :** Single Bench

**Advocate :** Sri K. Shantharaj, for the Appellant; Sri M.H. Ibrahim, Government Pleader, for the Respondent

## **Judgement**

1. This revision application u/s 115 of the CPC arises from the order dated 4-8-1994 passed by the learned Munsiff, Malavalli, rejecting the application, for amendment moved by the petitioner for the amendment of the plaint, i.e., I.A. 7 in Original Suit No. 468 of 1989. The plaintiff has filed this suit for declaration and injunction with respect to the property in Sy. No. 5 measuring 20 guntas. Boundaries of the property has been described in the plaint, but there was some clerical mistake in the description of the eastern boundary which has been mentioned to be rest of the portion of Sy. No. 5, while according to the petitioner that was a mistake. Eastern boundary should have been Halla and land belonging to Siddiah and others. The Trial Court rejected the amendment on the ground that it was being made at a late stage when the evidence has been closed.

2. Learned Counsel for the applicant submitted that the amendment is necessary for identification and issues can be allowed at any stage unless it amounts to making out a new case or amendment is likely to cause irreparable injury which cannot be compensated in terms of money. He contended that in the present case, the amendment sought was only for correction of clerical and typing error. It did not amount to any new case being made out. He submitted that it is only a correction of the particulars and description of the property. So learned Counsel

contended that the learned Court below acted illegally and illegally refused to exercise jurisdiction vested in it by not allowing the amendment.

3. These contentions of the learned Counsel for the applicant has been hotly contested by the learned Government Pleader. He submitted that it is within the jurisdiction to allow the amendment or not. So the Court has rejected on its view that it is likely to delay the proceedings. Therefore, mere rejection of the amendment cannot be said to be an error of jurisdiction. Really it would amount to extending the claim over the land originally described. So it may amount to a new case and therefore it was rightly rejected.

4. I have applied my mind to the contentions raised by the learned Counsel for the parties. The order allowing or rejecting the amendment it has been held amounts to a case decided. So order may be said to case decided. The law regarding amendment is well-settled. Order 6, Rule 17 reads as under:

"Order 6, Rule 17. Amendment of pleadings.--The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties". In the case of Pireonda Hongonda Patil v Kalgonda Shidgonda Patil and Others, their Lordships of the Supreme Court after having referred to the earlier decisions of their Lordships of the Privy Council in the case of Charan Das and Others v Amir Khan and Others, as well as to the decision of the Bombay High Court in the case of Kisandas Rupchand v Rachappa Vithoba , laid down the law as under:

"(10) Learned Counsel for the appellant referred us to the decision in Kisandas Rupchand's case, supra, and placed great reliance on the observations of Beaman J., at page 655:

"In my opinion, two simple tests, and two only, need to be applied, in order to ascertain whether a given case is within the principle. First, could the party asking to amend obtain the same quantity of relief without the amendment? If not, then it follows necessarily that the proposed amendment places the other party at a disadvantage, it allows his opponent to obtain more from him than he would have been able to obtain but for the amendment. Second, in those circumstances, can the party thus placed at a disadvantage be compensated for it by costs? If not, then the amendment ought not, unless the case is so peculiar as to be taken out of the scope of the rule, to be allowed".

"He contended that the first test laid down in the aforesaid observations was not fulfilled in the present case. We do not agree with this contention. First, it is not feasible nor advisable to encase a discretionary power within the strait jacket of an inflexible formula, Secondly, we do not think that the "quantify of relief, an expression somewhat difficult of appreciation or application in all circumstances, was in any way affected by the amendments allowed to be made in the case. What happened in the present case was that there was a defect in the plaint

which stood in the way of the plaintiff asking for the reliefs he asked for; that defect was removed by the amendments. The quality and quantity of the reliefs sought remained the same; whether the reliefs should be granted or not is a different matter as to which we are not called upon to express any opinion at this stage. We think that the correct principles were enunciated by Batchelor, J. in his judgment in the same case, viz. 33 Bom. 644 , when he said at pp. 649-650:

"All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. . . but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct. But, the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side, or can it not?"

Batchelor, J. made these observations in a case where the claim for dissolution of partnership and accounts, the plaintiffs alleging that in pursuance of a partnership agreement they had delivered Rs. 4,001 worth of cloth to the defendants. The subordinate Judge found that the plaintiffs did deliver the cloth, but came to the conclusion that no partnership was created. At the appellate stage, the plaintiffs abandoned the plea of partnership and prayed for leave to amend by adding a prayer for the recovery of Rs. 4,001. At that date the claim for the money was barred by limitation. It was held that the amendment was rightly allowed, as the claim was not a new claim".

5. In the present case, it has not been held nor amendment has been rejected on the ground that it tantamount to making out a new case and I think it has rightly not been so held and not so urged. It is only a correction of the description of the property relating to boundary. No doubt, there might have been some delay. But where amendment is has been necessary for final adjudication of the dispute between the parties with reference to property in dispute and its identity. That an amendment can be allowed at any stage as per Order 6, Rule 17 of the Code as it is provided therein by use of expression that, "the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Legislature itself has been very clear when it

uses the expression, "at any stage of proceedings". Hence, there was no bar or restriction on the part of Munsiff to allow the amendment. The power to allow amendment at any stage in the law of amendment is contained and right of the party is there. Hence, it should have been allowed. The order impugned amounts to refusing to exercise jurisdiction vested. Hence, revision is allowed. The order impugned is set aside. Plaintiff is allowed to amend the claim as per the amendment application, no doubt, subject to payment of cost of Rs. 300/- by plaintiff (petitioner) to defendant (respondent).