
(1971) 03 KAR CK 0015

In the Karnataka High Court

Case No : Civil Revision Petition No. 117 of 1971

Lumanna Somanna Malik

APPELLANT

Vs

Dharmarao Annarao Chougule

RESPONDENT

Date of Decision : 19-03-1971

Acts Referred:

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

Citation : AIR 1971 Kar 284 : (1971) 1 MysLJ 465

Hon'ble Judges : H.B. Datar, J

Bench : Single Bench

Advocate : K.I. Bhatta, for the Appellant; W.K. Joshi, for the Respondent

Judgement

H.B. Datar, J.—The petitioner in this revision petition is the original plaintiff in O. S. No. 95 of 1969, on the file of the II Additional Civil Judge, Belgaum and has challenged the order passed by the learned Civil Judge dismissing the application, I. A. XIV filed for amendment of the plaint. By the application filed for the amendment of the plaint, the plaintiff was seeking to state that the order passed by the Assistant Commissioner, S. D. Belgaum, was without jurisdiction for the reason that "Chougala" office is neither a Village Office, nor a hereditary office within the meaning of the Mysore Village Offices Abolition Act and the Watan Act of 1874. The petitioner also sought for certain other amendments, which according to the petitioner, are necessary to decide the real points in controversy between the parties and to enable the court to grant the reliefs claimed by the plaintiff.

2. The defendant resisted the said application on several grounds.

3. The learned Civil Judge by his order dated 12-1-1971 dismissed the said application (I. A. XIV) and it is the correctness of this order that is challenged before this Court.

4. By analysing the judgment of the learned trial Judge, it appears that primarily there are three grounds which weighed with him for rejecting the application.

The first ground was that the proposed amendment introduces a new plea and this plea could not be allowed to be raised. The second ground was that on account of the new plea being raised, it would amount to an inconsistent case and thirdly evidence has to be recorded by the Court. In fact, the learned Civil Judge has, in clear terms stated as follows:--

"..... If the present amendment is allowed, it would necessitate the recording of the evidence to show whether or not the plaintiff had been notified or heard by the Assistant Commissioner and this is subject to the proviso that the plaintiff had a locus standi in those proceedings. In my opinion, this would amount to a totally new plea which was not raised before the Assistant Commissioner, when the eviction proceedings were initiated against the plaintiff. Such a plea cannot be allowed to be introduced at this belated stage."

5. Sri K. I. Bhatta, learned counsel appearing for the petitioner, submitted that having regard to the principles of law governing the grant of amendment, the present order passed by the learned Civil Judge rejecting the application for amendment was one which was opposed to the principles of law laid down by the Supreme Court and this Court, and hence the trial Court has failed to exercise its jurisdiction which was vested in it by law. It was further submitted by him that since the writ petition which was filed before this Court has been withdrawn, now the only forum where he can urge all the contentions would be in the present case. It was therefore submitted that it would be necessary to allow the plaintiff to raise all pleas, so that the matter could be finally adjudicated upon in the present proceedings. It was submitted that the reasons assigned for refusing amendment were opposed to the principles of law governing granting of amendment.

6. As against these contentions of the petitioner's counsel, Sri W. K. Joshi, learned counsel appearing for the respondent, very strenuously urged that this Court has no jurisdiction to entertain an application in revision against the order declining to grant the amendment application. It was further submitted that the exercise of discretion by the trial Court was perfectly sound and did not call for interference by this Court. It is therefore necessary to see as to what are the principles governing the grant of application for amendment of plaint and then see whether this Court has jurisdiction to entertain an application in revision against the order either granting or refusing amendment of pleadings.

7. The circumstances under which amendment should be granted are laid down in several judgments of the Supreme Court and I may briefly refer to the two judgments of the Supreme Court; one is the case in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, is the case in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, the Supreme Court approved the following enunciation of law in *Kisandas Rupchand v. Rachappa Vithoba* ILR (1906) 33 Bom 644 by Batchelor, J., on the question of amendment of pleadings.

"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."

In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, referred to above, their Lordships of the Supreme Court apart from enunciating the law stated that

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

It is in the light of the principles laid down in the case in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, and in the case in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, that the question of the grant of amendment has to be considered.

8. If these principles are applied, it may be seen that refusal of the application for amendment in the present case is clearly opposed to the decisions of the Supreme Court referred to above. One of the reasons which has been mentioned by the learned Civil Judge is that he heard the arguments on some of the issues; that application for amendment will introduce a new case and that this will require leading o? evidence and suggested that it is rather belated. According to my view, as stated by their Lordships of the Supreme Court in the cases cited above, the fact that by mistake, negligence or inadvertence, the plea which is now sought to be raised was not raised earlier, cannot be made a ground for declining the amendment. It has been stated by the learned Civil Judge that the plaintiff was aware of these contentions and these pleas which could have been raised earlier have not been raised and no satisfactory explanation is given as to why they were not raised at the earlier stage.

I am of the view that the answer to this is found in the principle laid down in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, cited above that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. I am, therefore of the view that the fact that at an earlier stage the plea could have been raised and it was not raised is no ground for the Court below to refuse the amendment prayed for.

8-A. In this connection, I should like to refer to the principles underlying the provision of Order VI, Rule 17, Civil Procedure Code. This has been forcefully stated in *Cropper v. Smith* (1884) 26 Ch D 700 by Bowen, L. J., as under:

"..... It is well established principle that the object of Courts is to decide the rights of the parties and not to punish them for mistakes they made in the conduct of their cases. I know of no kind of error or mistake which, if not fraudulent or intended to over-reach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace. It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as such a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

In this case it cannot be said that when the plaintiff wanted to make an application for amendment, he was actuated by fraudulent design or intended to over-reach the Court. It is only to bring out all the matters of dispute clearly that the amendment of the plaint was sought for. The refusal of such amendment amounts to a grave error committed by the Court below in the exercise of its Jurisdiction in refusing them.

9. It may also be seen that by granting amendment prayed for in the present case, in my view, neither the nature of the suit, nor the cause of action or the subject-matter of the dispute is changed or altered. With the result, it is only an additional ground or new plea which the plaintiff is seeking for the purpose of ultimately succeeding in the suit and getting a decree in his favour. Therefore, I am of the view that the Court below having entirely overlooked the principles laid down which are referred to earlier, acted contrary to the provisions of the decisions referred to above and hence the order under revision is one which is liable to be set aside. It is necessary now to consider the other contention that a revision petition is not maintainable against an order granting or refusing an order of amendment.

10. The learned counsel for the respondent has brought to my notice the Judgment of this court reported in (1970) 2 Mys LJ 334, V. Ramakrishna v. A. Davidappa. The headnote of the case is extracted below:--

"Granting or refusing amendment of pleadings is a matter within the discretion of the trial Court, and now the Supreme Court has laid down that High Courts should not, u/s 115, Civil Procedure Code, interfere with the order of the trial Court refusing or granting amendment." In that case after considering the facts of the case, Santosh, J., has stated:

"4. There is considerable force in the contention of Sri Farukhi that this is not a fit case for granting permission to amend the written statement. In the written statement filed by the petitioners in the said suit, their contention was that the transaction in question was a sale, but the sale, was not genuine or valid. The petitioners have also specifically contended in written statement that no consideration passed in the instant case. The petitioners have also denied that

the said property was leased back to them. Now, the petitioners in the amended written statement want to take the stand that the transaction in question is a mortgage and consideration had passed under e same. The contention now put forward is that it is a debt and they are agriculturists. It may also be pointed out that evidence had been recorded in the cases and both sides have closed their case and the matter is posted for arguments and at that late stage the petitioners came forward with he application for amendment of the Written statement"

The Court thereafter referred to the earlier findings and conduct of the plaintiffs and thereafter made the observation extracted in the headnote and then stated in para 7 as under:

"7. I am therefore of the opinion for the reasons mentioned above that this is not a fit case calling for interference in revision u/s 115 C. P. C."

10-A. It may also be noted that in this case reliance is placed upon the Judgment of the Supreme Court as short noted in Gopalakrishna's Supreme Court Short Notes dated 15-2-1967, Item 60, Radhey Shyam v. Ham Autar, C. A. No, 500 of 1965 for the purpose of holding that revision petition is not maintainable. In Radhey Shyam's case it has not been held that the High Court is not competent to interfere u/s 115, Civil Procedure Code. I have seen the full text of the judgment in C. A. No. 506 of 1965 (SC). In that case their Lordships of the Supreme Court did not deal with regard to the scope of revisional jurisdiction against the granting of application for amendment. The Short Note of the Case does not appear to be the accurate summary of what the decision is.

10-B. The learned counsel for the respondent has also relied upon two other judgments, one is the judgment of Govinda Bhat, J., in C. R. P. No. 611 of 1965, D/-20-6-1967 (Mys), Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, and L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., Leach and Co. Ltd. v. Jardine Skinner and Co., stated as under:

"..... On a perusal of the pleadings it cannot be said that the view taken by the Court below is either arbitrary or wholly unsupportable. A suit based on the basis of title obtained by succession under the customary Aliyasanthana Law is not the same as a suit for partition of joint family properties belonging to the Aliyasanthana Kutumba. The two constitute different causes of action. In my opinion, there is no error of jurisdiction calling for interference in revision u/s 115 of the Code of Civil Procedure."

The Court took the view that the order of trial Court was neither arbitrary nor wholly unsupportable, the Court therefore declined to interfere in revision u/s 115 of the Code of Civil Procedure. The other judgment which is referred is the judgment of Santosh, J., in C. R. P. No. 1131 of 1965, D/- 23-3-1967 (Mys). It may be seen that the case did not deal with the question of amendment. On the contrary, after considering the entire matter, the Court has stated as follows:

"..... For the reasons mentioned above, it is not possible to say that any question of jurisdiction is involved in this revision petition; nor is it possible to say that the order of the Courts below is illegal or erroneous."

I have no doubt that this Court would have interfered and set aside the order passed by the trial Court if the conditions for exercise of jurisdiction existed in the case.

11. As against this, there are several judgments of this Court, in which, this Court in exercise of the power u/s 115 of the Code of Civil Procedure, interfered with the grant or refusal of application for amendment. The first is the judgment of Chandrashekhar, J., in C. R. P. No. 200 of 1970, D/- 15-9-1970 (Mys). In that case an application for amendment was refused and the revision application was filed before this Court and it was brought to the notice of this Court that the learned Munsiff had without appreciating the judgment of the Supreme Court refused the application for amendment. While considering this question, this Court has stated as follows:

".... The reason given by the learned Munsiff for not permitting the amendment was highly belated, that by the proposed amendment defndt.-1 was setting up a new plea inconsistent with his earlier one, and that the application was not made in good faith,"

Chandrashekhar, J., after referring to the Supreme Court judgment Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, stated as follows:

"As to the second of the above conditions, it cannot be said that the proposed amendments are not necessary for determining the real questions in controversy between, the parties. As to the first of the above conditions, the proposed amendment does not work any injustice to the plaintiffs, because any trouble and expenditure caused to them by allowing the amendment, can be compensated by awarding costs.

The learned Munsiff did not apply proper tests for deciding whether or not the proposed amendment should be allowed. He as overlooked the law laid down by the Supreme Court, which is binding on all the Courts. Hence his order is clearly unsustainable."

I am of the view that the present case falls within the four corners of the principles laid down in the judgment by Chandrashekhar, J., in C. R. P. No. 200 of 1970 (Mys). In this case also, the learned Civil Judge has rejected the application for amendment without applying proper tests, and if as Chandrashckhar, J., has stated that if the learned Judge did not apply proper tests for deciding whether or not the proposed amendment should be allowed and has overlooked the law laid down by the Supreme Court, which is binding on all the Courts, the order under revision is one which is clearly unsustainable and should be interfered with by this Court. To the same effect is the view taken by this Court in C. R. P. No. 210 of 1960, D/- 2-3-1971 (Mys) by Chandrashekhar, J., and G. R. P. No. 1643 of

1970 (Mys) decided by Venkataramiah, J., on 28-1-1971. As held by the Supreme Court in D.S. Chellammal Anni Vs. Nasanan Samban, where an authority has upon an erroneous view of law failed to exercise his jurisdiction, it is the duty of the High Court to interfere with such order u/s 115 of the Code of Civil Procedure.

12. The learned counsel for the respondent brought to my notice two other decisions of this Court. One is the judgment in 1963 (2) Mys LJ 263 : AIR 1964 Mys 56, N. Shivanna v. J.B. Thammaiah. In my view this judgment has no bearing upon the facts of the present case. The other judgment is in 1967 (1) Mys LJ 71, Rudrawwa v. Balawwa, and it cannot be invoked in the present case, inasmuch as it is clear from the discussion of the matter at page 74 that

"Mr. Savanur made an oral request to us to permit the plaintiff to amend her plaint and put forward the new case which had appealed to the appellate Court. We think we should not accede to that prayer. From the facts of this case, it is clear that the plea in question is clearly an afterthought. Hence, the request of Mr. Savanur for permission to amend the plaint is refused."

It may be seen that the appellate court had made out a new case and it was that new case which made in the appellate Court was sought to be put forth before this Court by means of oral application for amendment. I do not find any principle of law laid down in the said case, and according to me even this decision does not help the respondent in any way.

13. Recently, Chandrashekhar, J., has considered and referred to the judgment of Santhosh, J. (1970) 2 Mys LJ 334 in C. R. P. No. 799 of 1968 decided on 21-1-1971 (Mys) and laid down that in a case where the Courts below have failed to follow or apply the law laid down by the Supreme Court and the High Court, then the said order is one which could be interfered with, and this aspect of the matter was not brought to the notice of Santosh, J. With respect, I fully agree with the view taken by Chandrashekhar, J., in C. E. P. No. 799 of 1968 (Mys).

14. On the contrary, it may be seen that the preponderance of the view is that where an application is wrongly rejected or it is shown to be perverse, injurious or arbitrary, revision application always lies: where it cannot be said that the trial Court erred in exercise of its discretion in granting or refusing amendment, the High Court will decline to interfere with the matter. In the case in Abdul Rahim Naskar Vs. Abdul Jabbar Naskar and Others, it has been laid down as follows:--

"Where the lower Court has wrongly rejected an application for amendment the High Court can interfere u/s 115."

In Gadampetti Subbiah Setti Vs. Chaluvadi Ramayya Setti and Others, The High Court of Madras held that:

"Though it is in the discretion of the trial Court to allow or not to allow an amendment of the pleadings and the High Court will not interfere ordinarily with

an exercise of sound discretion, when the exercise of that discretion results in an improper refusal of an amendment, it is the duty of the High Court to set it right."

The Court after considering the circumstances, allowed the revision petition. The former High Court of Mysore in a case in AIR 1955 Mys 141, Damodara Sastry v. Nilgiri Sanjiviah, took the view that a revision lies from an order allowing or refusing to allow the amendment of pleading; Padmanabiah, J., considered all the authorities stated as under: in paragraph 7 of the order:

"(7) The learned counsel for the plaintiff contended that no revision lies from an order allowing or refusing to allow an amendment of a pleading under Order 6, Rule 17, Civil Procedure Code. In support of this contention, he cited the decisions reported in -- Mt. Suraj Pali Vs. Ariya Pretinidhi Sabha, and Purushotam Lalji v. Hara Narayan Dass AIR 1941 Oudh 87. No doubt, it is held in both the cases that no revision lies from an order allowing or refusing to allow an amendment of a pleading under Order 6, Rule 17, Civil Procedure Code. The High Court of Nagpur has, in the case reported in AIR 1941 289 (Nagpur) taken a contrary view. There does not appear to be any decision of this Court directly on the point. But the practice in this Court has all along been to entertain revision petitions arising out of an order under Order 6, Rule 17, Civil Procedure Code. If instances are wanted, the cases in (1925) 30 Mys CCR 37 : (1928) 33 Mys CCR 350 : (1932) 37 Mys HCR 519 and (1934) 39 Mys HCR 332; may be perused. These are cases where revision petitions against such orders have been admitted. I therefore hold that a revision lies from an order allowing or refusing to allow an amendment of a pleading."

All these decisions and the principles laid down therein will disclose that where the Court has wrongly rejected the application for amendment or granted amendment application which should not have been granted, it is open to the High Court under the Provisions of Section 115 of the CPC to interfere with the same, provided the conditions laid down therein are satisfied.

15. Having regard to the nature of this case and also the circumstances, I am of the view that the learned Civil Judge has failed to exercise jurisdiction which was vested in him and since he has failed to exercise his jurisdiction which was vested in him, this Court is entitled to interfere with that order u/s 115 of the Code of Civil Procedure. As already stated, the reasons given by the learned Civil Judge for rejecting the application are opposed to the principles of law laid down by the Supreme Court. Hence the order of the learned Civil Judge dismissing I. A. XIV is set aside and the application, I. A. XIV is allowed. The application for amendments is granted. It is necessary to compensate defendant by awarding cost. I direct that the petitioner shall pay Rs. 50/- as cost of the application in I. A. No. XIV to the defendant.