

(1980) 12 CAL CK 0033
In the Calcutta High Court
Case No : Suit No. 939 of 1978

Mayapur Sree Chaitanya Math and Others	APPELLANT
Vs	
Tridandeeswami Bhaktikusum Shraman Maharaj and Others	RESPONDENT

Date of Decision : 17-12-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 85 CWN 642

Hon'ble Judges : D.K. Sen, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sen, J.—This suit was filed on the 22nd December 1976 by Mayapur Sree Chaitanya Math, a registered society and its General Secretary, Assistant Secretary, Treasurer and Members against the defendants with leave u/s 92 of the Code of Civil Procedure, claiming, inter alia, that they are the lawfully constituted governing body of the said Math and entitled to control, possession, management and administration of the same and its assets. A permanent injunction restraining the defendants Nos. 1 to 5 and their servants, agents has also been claimed restraining them from interfering with the management, control and possession of the said Math. It is further claimed that the two alleged Deeds of Appointment dated the 7th July 1976 executed by Bhakti Vilas Tirtha Maharaj are void, inoperative, and not binding on the plaintiffs and that the said documents should be delivered up and cancelled. A further injunction restraining the said defendants Nos. 1 to 6 from claiming or usurping the office of shebait under the said Deeds of Appointment has also been claimed. It is, inter alia, alleged in the plaint that the said Deeds of Appointment are forged and fabricated and that they are not signed or executed by the purported executant. It is also alleged that the said documents have been brought into existence falsely and fraudulently by the defendants with an intention to usurp the right of shebaitship and the management, control and custody of the said Math and the

properties thereof.

2. It is a matter of record that a written statement has been filed on behalf of the defendants contending, inter alia, that this suit is not maintainable as framed as the plaintiffs do not have any interest in the sevapuja of the Deities concerned nor are they the disciples of Tirtha Maharaj.

3. An application was made by the defendants for revocation of the leave granted u/s 92 of the CPC which was not allowed. An appeal has been preferred from the order refusing revocation which is pending. In the meantime the plaintiffs have taken out this summons on the 23rd September, 1980 praying inter alia, for leave to amend the plaint. By way of the amendments sought to be introduced, the plaintiffs intend to allege that each of the plaintiffs is a worshipper of the Deities installed at the Math and other parts of India and that all the members of the plaintiff No. 1 are worshippers of the said Deities and are the disciples of the original founder. The particulars of fraud committed by the defendants in having the impugned Deeds of Appointment executed are also sought to be incorporated in the plaint by the proposed amendment.

4. This application is opposed. Learned Advocate appearing for the defendants contended that the amendments as prayed for should not be allowed at this stage. The plaintiffs filed this suit with leave u/s 92 of the CPC on the basis of the plaint as it originally stood and not on the amended plaint. The original plaint as framed is not maintainable.

5. By amending the plaint, the plaintiffs are seeking to cure the defects in the plaint. The cause of action if any, in the original plaint is now barred by limitation and as such a valuable right has accrued in favour of the defendants which will be lost if the amendment is allowed.

6. It is contended on behalf of the plaintiffs, on the other hand, that the main claim in the suit is for setting aside the two Deeds of Appointment and by the proposed amendments neither the cause of action nor the nature and character of the suit was being altered. The parties also remained the same except that the individual status of the plaintiffs was being brought on record.

7. In support of the respective contentions several decisions were cited from the Bar.

The following decisions were cited on behalf of defendants.

(a) V. Samanna Iyer Vs. Kadathhir Village Rajavaikal Channel Silt Clearance Committee reported in AIR 1926 Mad 577. Here a suit was filed on behalf of a Committee for refund of balance of subscriptions collected for silt clearance. It was subsequently discovered that it were the villagers of the locality and not the committee who were entitled to claim such balance. The plaintiff thereafter sought to amend the plaint. The amendment was allowed in the Court of the first instance, but was set aside by a Division Bench of the Madras High Court which observed as follows :?

When a person brings a suit alleging that he had the right to sue and when it is found that he has not the right the Court would not be justified in directing an amendment of the plaint in order to enable the proper party to sue.

(b) A Ramachandra Naidu Vs. Kandaswami Mudaliar reported in AIR 1949 Mad 416. Here the plaintiff filed a suit for damages in his individual capacity. Subsequently he sought to amend the plaint by describing himself as a Manager of a joint family. The application for amendment was dismissed. On appeal, a single Bench of the Madras High Court held that in the facts the amendment was rightly refused as a suit by the Manager of the joint family as such had become barred by limitation since the date of the filing of the suit.

(c) Rajendra Nath Tikku vs. Royal Calcutta Turf Club reported in 67 C.W.N. 903. In this case a suit was instituted against the Royal Calcutta Turf Club on the basis that the latter was a registered Society. Subsequently it was discovered by the plaintiff that the said Club was not so registered and there after an application was made for adding the members of the Royal Calcutta Turf club as defendants. It was contended that the defendants had been mis-described. A single Bench of this Court disallowed the application holding that there was no mis-description and that the amendment if allowed would frustrate the defendants' plea of limitation. He also held that by bringing into record the defendants in a representative capacity would be to change the suit into one of an entirely different character.

(d) The Municipal Corporation of Greater Bombay v. Lala Pancham and others reported in AIR 1965 S.C. 1008. In this case the High Court of Bombay permitted the amendment of a plaint whereby allegation of fraud which were not in the original plaint were allowed to be introduced. On appeal to the Supreme Court it was observed inter alia, as follows :?

There is, however, another ground and a stronger one which impels us to hold that the amendment should never have been allowed. That ground is that the plaintiffs are now making out a case of fraud for which there is not the slightest basis in the plaint as it originally stood. The mere use of the word mala fide in the plaint cannot afford any basis for permitting an amendment. The context in which the word malafide is used in the plaint clearly shows that what the plaintiffs meant was that the order of the Corporation having been made in exercise of arbitrary powers.

8. The following decisions were cited on behalf of the plaintiffs :?

(a) L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., was cited for the following observations of the Supreme Court :--

It is no doubt true that Courts would as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the

power of the court to order it, if that is required in the interests of justice. In AIR 1921 50 (Privy Council) (A) the Privy Council observed :

That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right, which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case.

(b) A.K. Gupta and Sons Vs. Damodar Valley Corporation, was cited for the following observations :--

It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neale* (1887) 19 Q.B.D. 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts. The amendment will be allowed even after the expiry of the statutory period of limitation." "The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in *Cooke v. Gill*, (1873) 8 C.P. 107 (116), in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson, v. Unicos Property Corporation Ltd.* 1962-2 All E. R. 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new set of ideas" *Dorman v. J. W. Ellis & Co. Ltd.* 1962-1 All E. R. 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.

(c) *Ganesh Trading Co. Vs. Moji Ram*, . In this case the Supreme Court allowed amendment of a plaint which was originally filed by a firm through a partner. Subsequently an amendment was sought to indicate that the firm having been dissolved on the date of the filing of the suit and that the suit was being instituted by one of the partners. The Supreme Court held that such amendment did not alter the cause of action the character of the suit nor the identity, of the plaintiff who remained the same. It only brought out correctly the capacity of the plaintiff therein.

9. In facts and circumstances and on consideration of the submissions made it appears that leave taken initially u/s 92 of the CPC is no bar to the plaintiff seeking amendment of the plaint. Several decisions on the point was referred to

on behalf of the plaintiff. In the original plaint there is already a charge of forgery. There is no reason why an amendment seeking to furnish particulars should be shut out.

10. The main dispute is whether the plaintiffs Nos. 2 to 11 should be allowed by way of amendment to aver that as individuals they are worshippers of the Deities concerned and are the disciples of the original founder of the said Math. The identity of the said plaintiffs is not being changed by the proposed amendment. The objects of the plaintiff No. 1, a registered society, which was produced at the hearing is inter alia, the culture and propagation of cult of Baishnabism. It is not in dispute that the Deities in the said Math are Vaishnaba Deities. The fact that the plaintiffs Nos. 2 to 11 are the worshippers of the Deity concerned is not inconsistent with their membership of the plaintiff No. 1. For the reasons above and in view of the decision in *M/s. Ganesh Trading Company* (supra) the plaintiffs are entitled to succeed in this application. There will be an order in terms of prayers (a), (b) (c) and (e). The Cause title is also allowed to be amended as indicated in the affidavit-in-reply. Amendments are to be incorporated on a signed copy of the minutes of the order by the 15th January, 1981 and reverification within a week thereafter. All parties and the Department to act on such signed copy. It is made clear that this order is made without prejudice to the rights and contentions of the parties. Within a week after the amendment of the plaint the plaintiffs are directed to serve a copy of the amended plaint on the defendants. The defendants will be at liberty to file an additional Written Statement, if they are so advised, dealing with the amended portion of the plaint, within a fortnight after the service of the amended plaint on them. The plaintiffs will pay the costs of this application to the defendants. On the oral application on behalf of the defendants the operation of this order is stayed till the 15th January 1981.