

(1998) 07 KAR CK 0101

In the Karnataka High Court

Case No : Civil Revision Petition No. 1717 of 1994

M/s. Kamadhenu Financiers and Traders (Registered), Hassan	APPELLANT
Vs	
Kum. N. Pushpavathi	RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17, 153
Constitution of India, 1950 — Article 39 (a)

Citation : (1999) 3 KarLJ 154

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri O. Mahesh, for the Appellant; Sri S. Raju and Sri K.L. Manjunath, for the Respondent

Judgement

1. Heard Sri O. Mahesh, learned Counsel for the revision petitioner.
2. This revision petition arises from the judgment and order dated 31-5-1994 passed by Sri Basavaraj Patil, Civil Judge, Hassan, on an application for amendment or correction in the cause-title of the plaint. In the plaint, there was a wrong description of the defendant 1. The suit was filed against Kamadhenu Credit Corporation. But, according to the plaintiff, it was typed as Kamadhenu Financier and Traders. Plaintiff moved an application for correction and amendment in the cause-title and also asserted that this mistake has crept in the description of the defendant 1 on account of bona fide mistake and inadvertence. Therefore, he may be allowed to correct the description of defendant 1 as Kamadhenu Credit Corporation instead of Kamadhenu Financier and Traders. The defendant objected to the application on the ground that it amounts to changing the nature of the case. The Court below considered the affidavit and the circumstances of the case, and opined that for complete determination of the real question in controversy was necessary. It further opined that, the misdescription of defendant 1 that has been caused on account of bona fide mistake and inadvertence should be allowed to be corrected. It observed that

there appears sufficient force in the contention of the plaintiff that mistake in describing the first defendant is due to inadvertence, and it further pointed out that except, for defendants 4 and 6, other defendants were also the partners of the Credit Corporation. The Court therefore opined that the amendment and correction was necessary for determination of real question in controversy and it would be a fit case wherein plaintiff be allowed to correct the description of defendant 1 as Kamadhenu Credit Corporation instead of putting it as Kamadhenu Financiers and Traders. Feeling aggrieved from that order, the defendant has come up in revision before this Court.

3. Sri O. Mahesh, learned Counsel for the petitioner, contended that this application for amendment was moved after almost three and half years from the date of institution of suit. He contended that this is a suit for recovery of money, therefore, amendment should not be allowed as the amendment was much delayed.

4. The contentions of the learned Counsel for the petitioner have been hotly contested on behalf of the respondent by Sri S. Raju, an Advocate of this Court, holding brief for Sri K.L. Manjunath. Learned Counsel for the respondent contended that it is only a clerical error or the bona fide mistake that had crept in description of defendant, the name of which could be permitted to be corrected under Order VI, Rule 17 as well as provisions of Section 153 of the CPC. Learned Counsel contended that the Court below has found that there is sufficient force in the contention of the plaintiff that mistake occurred was due to inadvertence. Learned Counsel contended that there is no question of any jurisdictional error having been committed, coming either under clause (a), (b) or (c), and secondly in the interest of justice and for fair trial and determination of question involved in the suit finally, the amendment was necessary and as such the Court below did not commit any error in allowing the amendment.

5. I have applied my mind to the contentions made by the learned Counsel for the parties.

We have to take note of the basic principles of law, in the light of Article 39-A of the Constitution as well, that procedural laws are intended to facilitate and not to obstruct the course of substantive justice. The procedures relating to pleadings are meant to clearly bring to the knowledge and notice of both the parties the respective case each side and stands of each other and with the object that the Court may be able to finally determine what is really in dispute between the parties and to prevent multiplicity of legal proceeding, delay and the abuse of process of Court. This basic principle has to be kept in view. Section 153 confers general power of amendment. Section 153 reads.

"Section 153.-- General power to amend.-

The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or

issue raised by or depending on such proceeding".

The plaintiff's intention has been to file the suit for recovery of money against Kamadhenu Credit Corporation and partners thereof. By mistake it has been described as Kamadhenu Financiers and Traders. The purpose of amendment was that what is the real controversy between the plaintiff and defendant namely Kamadhenu Credit Corporation has to be determined and not to see that suit is merely thrown on the technical ground. The provisions of Order VI, Rule 17 also provides that.-

"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".

The grant of amendment is subject to the condition that it should be necessary for the purpose of determining the real question between the parties to the transaction. Misdescription of a party or nonjoinder of necessary parties to the case with whom dispute is there cannot be the ground to dismiss the suit. It is also well settled principle of law that party may be allowed to first amend it. But, if he does not carry out the amendment, then suit has to be dismissed on ground, misjoinder or non-joinder of party.

6. Looking to this aspect of the matter, in my opinion, when description came to the notice of the party, he realised that there has been a mistake on his part, he was entitled to approach the Court for seeking correction of the description of party by way of amendment, might be u/s 153 or might be under Order VI, Rule 17 or Order 1, Rule 10 of the CPC. The Court has primarily got power u/s 153 to allow the defects to be removed by amendment in the proceedings of the suit which are necessary for the purpose of determining the real controversy between the parties to the dispute. Even Section 21 has also been introduced in the Limitation Act keeping that object in view, which provides that.-

"21. Effect of substituting or adding new plaintiff or defendant.-

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date".

7. These principles of law have been introduced with the sole object that justice may be done and real issues between the parties may be decided. In this case, the Court has accepted the assertion of the applicant made in the affidavit to the

application for amendment or correction wherein it has been stated.

"Due to inadvertence, I have made Kamadhenu Financiers and Traders as the 1st defendant and during my testimony before the Munsiff at Hassan, in O.S. No. 349 of 1989, I came to know that I have deposited money with Kamadhenu Credit Corporation".

The party could have bona fide make such mistake. It has been further contended,

"I was not aware that Kamadhenu Credit Corporation is also in existence. The mistake crept in is due to bona fide mistake and also due to inadvertence of mine".

Therefore, it was prayed for correction being allowed to be made. The Court below accepted the contention of the plaintiff by observing that there is force in the contention of the plaintiff that misdescription was due to inadvertence and it was bona fide mistake. Learned Counsel for the respondent contended that the defendants 4 and 6 were partners in Kamadhenu Credit Corporation and they were not the partners in Kamadhenu Financiers and Traders. Learned Counsel contended that the plaintiff has got his claim dismissed against defendants 4 and 6 and there is no question of, their being adversely affected on or by amendment being allowed. There is a catena of cases in which it has been laid down that said misdescription can be allowed to be corrected. In the case of Purushottam Umedbhai and Co. Vs. Manilal and Sons, , it has been laid down that:

"A Civil Court could permit, under the provisions of Section 153 (or possibly under Order 6, Rule 17 about which the Supreme Court said nothing), an amendment of the plaint to enable a proper description of the plaint to appear in it in order to assist the Court in determining the real question or issue between the parties".

Therefore, even Order I, Rule 10 may not apply, but u/s 153 it has got the power and the Supreme Court also observed it may be under Order VI, Rule 17.

Thus, in my opinion, the Court below did have jurisdiction to consider and to allow such amendment. I think the order does not have any tendency to create irreparable loss or injury to the revision petitioner. The order of the Court below does not suffer from any jurisdictional error. Revision, as such, has got no force and it is hereby dismissed. Costs made easy. Let the amendment or correction, if it has not been made so far by any reason, may be allowed to be incorporated within a period of one month from the date of service of copy of this order on the Court below.