(1952) 10 AP CK 0010

In the Andhra Pradesh High Court

Case No : Revision No. 375 of 1952

Nawab Mohd. Razack Ali Khan — APPELLANT

Vs

Hyderabad Bank Ltd. and Another — RESPONDENT

Date of Decision : 31-10-1952

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17

Citation : (1952) 10 AP CK 0010

Hon'ble Judges : Quamar Hasan, J;Despande, J

Bench : Division Bench

Advocate : Raja Bahadur Bishweshwarnath, for the Appellant; Hassan Abid Ali and Rashid Siddiq Hussain, for the Respondent

Judgement

1. This application in revision is directed against the order of the learned First judge, City Civil Court, Hyderabad, dated $$-3-1952 allowing the Plaintiff to amend the plaint in terms of his application of 7-1-1952 and add the Petitioner as party Defendant in the suit.

2. The Plaintiff, the Hyderabad Bank in voluntary liquidation originally instituted the suit against Mrs. Hasan Banu, opponent 2 for recovery of a demand loan amounting to Rs. 1957-4-2. Mrs. Hasan Banu admitted the loan, it demurred as to the number of shares pledged to be pledged with the Plaintiff. She asserted that in addition to hundred old shares of Sirpur Paper Mills and two hundred new shares of the same Mill, she had pledged another three hundred old shares of Sirpur Paper Mills and in support of this allegation, she relied on a receipt apparently purporting to be given by the Plaintiff Bank. The Plaintiff categorically denied the truth of this statement in his rejoinder stating that the receipt filed by the Defendant did not relate to any transaction with the Plaintiff Bank, that it was neither on the printed form of the Plaintiff Bank nor did it bear the signature of any proper officer for or on behalf of the Bank. It was further submitted that a deliberate fraud was sought to be perpetrated on the Plaintiff by the Defendant (if one of that name existed and was a real person) and Nawab Mohd. Razak Ali

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Khan who was the Director and later the Managing Director of the Bank. In order to create evidence in the books of the Bank regarding deposit of three hundred old shares of Sirpur Paper Mills, the said Nawab taking advantage of his connection with and official position in the Bank managed to tamper with the register of the Bank in a clumsy manner which betrayed itself. For this reason, the Plaintiff suspected that Hasan Banu was not a real person and that Nawab Razak Ali Khan had for his own ends got an account opened with the Bank fictitiously in the name of the said Hasan Banu and he himself or someone had been fictitiously signing as Hasan Banu and the said Nawab had been attesting all such signatures, delivering shares, taking them back, receiving and making payments himself and perhaps having the benefit of all the said monies himself. Neither the father''s name nor husband''s name of Hasan Banu was furnished to the Bank; nor the address was given in the books as care of Nawab Mohd Razak Ali Khan.

3. Reproducing these allegations in a separate application of 7th January 1951 the Plaintiff asked for permission to implead Nawab Razak Ali Khan and make consequential amendment in the plaint. The Defendant and Nawab Mohd. Razak Ali Khan resisted the application on various grounds the principal ones being that he was neither a necessary nor a proper party to the suit and that the addition of the proposed fresh party and consequential amendment of the plaint would alter the character of the suit.

4. The learned First Judge on a careful consideration of the whole matter in the light of the materials on record before him overruled the contentions advanced by the opposite parties and holding that the proposed amendment and addition of the Nawab as party Defendant would not change the. character of the suit, allowed the Plaintiff''s application.

5. It is against this order Nawab Mahamed Razak Ali Khan has come up in revision. The learned Advocate for the Petitioner argued that the. learned Court has erred in allowing the proposed amendment and addition of the Petitioner as Defendant, because a new case was set un on fresh facts, which facts were available even when the plaint was filed and that if a new ease cannot be allowed to set. up, the addition of the Petitioner would become superfluous and not covered by the provisions of O. 1, R. 10(2), CPC The learned Advocate for the Petitioner cited ? Ma Shwe Mya v. Maung Mo Hnaung AIR 1922 PC 249 (A) and Ram Saran Mandar v. Mahabir Sahu, AIR 1927 PC 18 in support of his contention that under the guise of amendment a new case cannot be allowed to be set up. For the proposition that if available facts are not made part of the plaint as originally filed, the introduction of fresh facts so as to make out a new case is not permissible, he relies on ? Bhagavatula Gopalakrishnamurthi and Others Vs. Dhulipalla Sreedhara Rao and Another, . To show that the Petitioner is neither a necessary nor a proper party to the suit reliance is placed on ? Banbihari Mukerji Vs. Bhejnath Singh Mahapatra, and ? Mukhi Jeramdas Jethanand v. Tikhmal Mulchand AIR 1935 Sind 194 (E).

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6. The first point to be considered is whether the Plaintiff, at the time of the institution of the suit, had knowledge of those facts which he seeks to bring on record by means of an amendment of the plaint. As already stated the suit is brought by the liquidator in the name of the Bank. He was a complete stranger to the suit transaction until the Bank went into voluntary liquidation and the present suit had to be brought in the discharge of his statutory duties. For the purposes of the suit he could naturally rely on the apparent tenor of the suit documents and entries in the books of the Bank. When the Defendant produced a receipt to support her allegation that she had, in addition to the shares mentioned in the plaint, pledged three hundred shares of Sirpur Paper Mills, the liquidator was put on inquiry and made a close scrutiny of the whole environment in which the suit transaction was brought about. In the Bank''s books and other necessary papers the husband''s name or that of the father of the Defendant was not mentioned except that she could be contacted through the Petitioner. It is admitted that Defendant is the wife of the Petitioner. In these circumstances, it seems difficult to predicate of the liquidator that he had pre-knowledge of facts and omitted it to state them in the plaint. This aspect of the case, therefore, distinguishes it from the Madras case referred to above.

7. The other argument that the amendment would alter the character of the suit though at first it appeared plausible to us, yet on further consideration seems to be devoid of substance. Even after the amendment the suit remains a suit for money had and received. Order 6, R. 17, CPC states that all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. No doubt, there are authorities which clearly limit the exercise of this right; an instance of one of such cases is to be found in ? AIR 1922 PC 249'' (A), where Lord Buckmaster delivering the judgment of the Privy Council declares that:

All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another nor to change by means of amendment the subject-matter of the suit.

The latter words are, no doubt, very wide, but they have to be read in connection with the facts of that case which show that the parties originally sued in respect of a contract made in 1912 and when they came up to appellate. Court they applied and obtained, an amendment basing their claim upon a contract made in 1903. His Lordship on these facts observed :

The real question in controversy between the parties in these proceedings was the existence and character of an agreement alleged to have been made in 1912 for the delivery of certain sites of oil specified and identified, by the numbers stated in the plaint, which could only have been delivered in respect of that subsequent bargain. When once that contract has been negatived to permit the

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Plaintiff to set up and establish another and an independent contract altogether would in their Lordships'' opinion, be to go outside the provisions established by the Code of Civil Procedure.

8. It will be seen that these facts are very different from those in the present case. Similarly the case of ? ''Ramsaran Mandar v. Mahabir Sahu (B) is distinguishable on facts. There the whole case was sought to be altered at the time of argument in the Privy Council. The reason for the rule enunciated by the Privy Council appears to be that the substitution of a totally new case in place of the original one, cannot be said in any sense to be an amendment of the original claim. No such consideration arises in the present case. The original claim has not been altered. What is intended to be made sure is whether the original Defendant has entered into a bona fide transaction or her husband has been manipulating in her name for ulterior motives taking advantage of his official position in the Bank and on which of them the liability is to be fixed. In this view of the matter, we need not discuss the cases cited by the learned Advocate of the Petitioner in support of the proposition that the Petitioner was not a necessary party. Those rulings also are distinguishable on facts. Once it is held that amendment allowed was not beyond the competence of the Court below, the Petitioner becomes a necessary party. The result is that the revision fails and is hereby dismissed. There will be no order as to costs.

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