

(1956) 01 KAR CK 0003
In the Karnataka High Court
Case No : Civil Rem. Petition No. 24 of 1053

P. Scshappa Setty and Others

APPELLANT

Vs

Katta Venkataramana Setty and Others

RESPONDENT

Date of Decision : 20-01-1956

Acts Referred:

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

Citation : (1956) 01 KAR CK 0003

Hon'ble Judges : Padmanabhiah, J

Bench : Single Bench

Advocate : M.R. Janardhanam, for the Appellant; V. Krifshnamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Padmanabhiah, J.—This is a revision petition preferred by the Petitioners against the order of the learned Respondent, for amendment of the plaint in Original Suit No. 45 of 1954. Subordinate Judge, Bellary, allowing I. A. No. 311 of 1954 filed by the

2. The Petitioners are the Defendants and the Respondents the Plaintiffs in the lower Court. Plaintiffs' suit in the lower Court is for two recovery of Rs. 7,000/- due on certain hundies executed by Defendant 1. The allegations made in the plaint are that Defendant 1 as manager of Defendants' family borrowed on 23-3-1965 Rs. 7,000 and executed the suit hundies. But after the suit was filed, it appears that the office took objection that the hundies on which the suit was based were inadmissible in evidence, the same having not been written on Mysore Stamp Paper.

Then the Plaintiffs made an application as per I. A. No. 311 of 1954 under Order 6, Rule 17, CPC praying for the amendment of the plaint. The amendment sought was that Defendant 2 manager of the joint family of Defendants had along with the Plaintiffs between 5-11-52 and 3-54, that on settlement of accounts the

defoliantes were found due to the extent of Rs. 7,000/- that in satisfaction of that debt, the suit hundies were executed.

3. This application was opposed by the defendants on the ground that the same was not maintainable, that the amendment, if allowed, would have the effect of substituting an entirely new case, that it would also have the effect of altering the cause of action and the nature and Scope of the suit, and that the application should be dismissed. The learned Subordinate Judge allowed the amendment, and as against that order this revision petition is filed.

4. The only point that arises for consideration is whether the order of the learned Subordinate Judge cannot be sustained. It appears to me that the said order has to be upheld. The question that arises for decision is whether a creditor can be allowed to amend the plaint so as to put his suit on the original cause of action when it is found for any reason that he cannot maintain a suit on an instrument like a promissory note, or a hundi as in this case, as being inadmissible on some legal or technical ground.

The law on this point appears to be now well-settled, that being that where a negotiable instrument is a mere sequel to an earlier transaction and not the basis of the transaction itself, a suit on the original consideration can be based. The case law even goes to the extent of holding in such a case that a creditor can base the suit on the promissory note or, in the alternative, on the original consideration. The point is well enunciated in the case reported in "Baburam v. Ochhelal" AIR 1954 MP 117 (A), where the case law has been discussed in detail.

5. In the present case, it is no doubt true that the cause of action on the promissory note is different from the cause of action of the alleged "loan" which has given rise to the promissory note in question. In the Madhya Bharat case referred to above, it is accepted that two distinct or inconsistent causes of action or claims can be set up alternatively. When that is so, I do not see any reason why a creditor should not be allowed to put forth a different or inconsistent cause of action at a subsequent stage or substitute one claim for the other.

It is found that such an inconsistent claim does not have the effect of changing the nature of the suit. In the present case, as a result of the amendment having been allowed, the nature of the suit does not change and has not changed. The parties and their liability continue to be the same even after the amendment and the claim which is for the recovery of money continues to remain the same, Therefore the contention that the nature of the suit would change cannot be countenanced.

6. Another argument advanced by the learned counsel for the Petitioner was that an amendment of this kind cannot be allowed unless the plaint as originally laid or the document on which the suit is based indicated the previous transaction which is sought to be made the basis for the amendment. The learned Counsel for the Petitioner was not able to cite any provision or case law touching this point specifically. He drew attention to the very cases relied on by

the learned Subordinate Judge in the course of his order.

In all those cases, it is true that there was no indication in the plaint or in the document itself about the previous transactions between his parties which ultimately gave rise to the execution of the documents. The observation by the learned Subordinate Judge to the contrary in the course of his judgment cannot be accepted but the learned Counsel for the Petitioner was not to place his hand on any decision which deals specifically with the point urged, that an amendment to base the suit on the original consideration cannot be allowed unless the original consideration is indicated in some way or the other in the original plaint, or the document.

On the other hand, it is seen from the decision of the High Court of Madhya Bharat already referred to that such an indication of the original cause of action in the plaint is not at all necessary.

7. In that case, the suit was laid for the recovery of Rs. 3,400/- due on a dishonored hundi. During the course of evidence, the plaintiff applied to convert the suit into one based on the original cause of action i.e., by the amendment he sought to allege facts and circumstances which gave rise to the execution of the suit hundi. The lower Court allowed this amendment and the High Court affirmed that order. Again the case reported in *The Official Assignee of Madras Vs. V.A. Kuppaswami Naidu and Others*, also goes to show that the previous transactions need not be disclosed in the original plaint to enable an amendment to base the suit on the original cause of action. In that case also, the plaint did not contain sufficient materials upon which to found a claim upon any debt irrespective of that evidenced by the promissory note, The lower Court had dismissed the application for amendment but the High Court set aside that order and allowed the amendment. I am of opinion that to allow an amendment to base the suit on the original cause of action or on original consideration, it is not necessary that the original transaction should be indicated in the plaint already filed, or in the document itself. That should be a matter for evidence. If a Plaintiff fails to establish the original consideration or the original cause of action, then his suit will certainly be thrown out.

It is usual in this country to get negotiable instruments executed in satisfaction of past transactions and introduce words in such instruments as if cash was paid. To refuse permission to a creditor to fall back upon the original consideration in cases where the instruments are found admissible in evidence would cause much hardship to him.

8. The Defendants have not been prejudiced as a result of the amendment having been allowed. They have not even filed their written statement. They have got full opportunity of meeting the Plaintiffs' case.

In this connection, it has also to be remembered, that the Plaintiffs, if they so choose, can maintain a suit against these Defendants on the accounts for which, according to them, the present handiest have been executed. One of the

objects of allowing amendment of pleadings is to avoid multiplicity of suits. Under these circumstances, I think the order of the learned Subordinate Judge has to be affirmed.

9. In the result, the order of the learned Subordinate Judge is confirmed and this revision petition stands dismissed but without costs.