

(1963) 07 CAL CK 0027
In the Calcutta High Court

Rajendra Nath Tikku

APPELLANT

Vs

Royal Calcutta Turf Club

RESPONDENT

Date of Decision : 09-07-1963

Acts Referred:

Bengal Municipal Act, 1932 — Section 15

Citation : 67 CWN 903

Hon'ble Judges : A.N. Ray, J

Bench : Single Bench

Advocate : Choudhury, for the Appellant; S.N. Ghosh and A. Mitra for the Defendant Club, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Ray, J.—This is an application for amendment of the plaint and also for order for leave under Order 1, Rule 8 of the Code to sue the proposed defendants as representing all the members of the Royal Calcutta Turf Club, and for consequential reliefs. The plaintiff instituted this suit on January 22, 1963 against the Royal Calcutta Turf Club inter alia, for a declaration that the notice dated January 28, 1957 alleged in the plaint is bad, void and of no legal effect, and for a declaration that the petitioner is entitled to enter Calcutta Race Course of the Royal Calcutta Turf Club as well as other race courses at other places having reciprocal arrangements and for an injunction restraining the Club and/or its officials or agents or servants from interfering with the petitioner's right to enter the race course, and for a perpetual injunction restraining the Club and/or its officials or agents or servants from giving effect to the notice dated January 28, 1957. The petitioner's case in the plaint, in short is that he pledged two horses to a member of the Royal Calcutta Turf Club. The two horses were auctioned by the Club and the pledgee had to render an account and pay sums due to the petitioner. The pledgee failed to pay the petitioner's dues and a complaint was lodged under the Rules of the Club. An enquiry was ordered by the Stewards. On January 28, 1957 the Stewards informed the petitioner that he

had been warned off s he was guilty of corrupt practices. The order appeared in the Racing Calendar dated February 14, 1957. The petitioner's allegation is that he was never furnished with any charge or informed of any rule and the order dated January 28, 1957 that the petitioner committed a breach of the Racing Rules is impeached by the petitioner as illegal and void.

2. The suit is instituted against the Royal Calcutta Turf Club. In paragraph 20 of the petition the petitioner alleges that he was all along under the impression that the Royal Calcutta Turf Club is a registered society under the Societies Registration Act. In paragraph 21 it is alleged that on March 15, 1963 the petitioner's Solicitor was served with a copy of Chamber summons dated March 15, 1963, and the petitioner has come to know from the affidavit in support of the said summons that the society is not registered under the Societies Registration Act.

3. In paragraph 22 of the petition the petitioner alleges that the misdescription of the defendant came to the petitioner's knowledge on or about May 8, 1963 for the first time. In paragraph 23 the petitioner states that he has been advised to rectify the misdescription. In paragraph 24 the petitioner states that the amendments are absolutely necessary for adjudication of the issues involved in the suit.

4. Counsel appearing on behalf of the petitioner contended that the cause title suffered from misdescription in relation to the defendants and submitted that such misdescription was curable by amendments. Counsel for the petitioner relied on a Bench decision *Municipal Commissioners Vs. Gangamani Chaudhurani*, and a Bombay decision *Harischandra Khunderrao Kothare Vs. A.B. Craig*, in support of the proposition that a misdescription of the nature in the present case could be amended. In the Calcutta decision a suit was instituted for a declaration that the assessment made by the municipal commissioners was ultra vires and illegal. The suit was instituted against the Chairman of the municipal commissioners instead of the commissioners themselves as required by Section 15 of the Bengal Municipal Act of 1932. It was held that it was a case of misdescription which could be corrected. The plaintiff's intention to sue the commissioners was found to be a misdescription for the commissioners, who were the real parties. There is an observation in the decision to the effect that the name is not always the true criterion for determining the party really sued; the nature of the allegations in the plaint and the nature of the relief sought should be considered. The plaint in the Calcutta case was judged in the light of those observations and a perusal of the plaint made is quite clear in that case that the plaintiff sought to bind the Corporation by the decree which he prayed for. The decision in the *Baroda Railway case* (3) (65 IA 182) was referred to in that case. But in the *Baroda Railway case* though the suit was not in terms against the State of Baroda, but against the Gaekwar Baroda State Railway through Manager and Engineer-in-chief, it was found to be in reality a suit against the Gaekwar and therefore the suit was dismissed. In the Bombay

decision the suit was filed by a Solicitor for damages, for breach of an alleged contract of employment by the G.I.P. Railway Employees Mutual Benefit Fund Society. Two persons were made party defendants and were sued on behalf of themselves and all other members of the said Society. When the suit was filed leave was obtained under Order 1, Rule 8 of the Code. At that time the prayers were only for a decree against the defendants for a sum of Rs.90,000/- and for costs. The defendants thereafter took out a summons to revoke the leave granted ex parte. It was held that on the averments in the plaint the prayer for a decree against all individuals of the society was not permitted by law and the ex parte leave set aside. Thereafter the plaintiff took out a summons for amendment of the plaint and for leave under Order 1, Rule 8 to sue the defendants in their representative capacity, and for leave under clause 12 of the Letters Patent. It was held that a suit for damages for breach of an alleged contract of employment against the unregistered society whose property and funds were not vested in any individual but belonged to and remained vested in the members of the society, through some of its members was maintainable. The amendments asked for in the Bombay decision were for a declaration that the members of the society were liable to receive from them the amount claimed as damages.

5. The term "misdescription" a fortiori means that a defendant has not been correctly described. It has been recently held by the Supreme Court in the decision of Purushottam Umedbhai and Co. Vs. Manilal and Sons, that if a foreign firm is sued in the firm name though the Code does not recognise such a procedure, the plaint is not bad and such a defect or irregularity is one of misdescription of the defendant because all the partners who from the firm are in effect sued as defendants but their names are not set out behind the firm cloak used for the sake of brevity in the plaint. Counsel for the respondent contended in the present case that the suit as constituted against the Royal Calcutta Turf Club was a nullity because such a Club cannot be sued in its Club name. It may be stated here that Lord Parker in the London Association for Protection of Trade case (5) (1916) 2 AC 15 said that an association which is not a corporate body, nor a partnership nor a creation of statute could not be made a defendant in its name. A members' club which is an un-incorporated and unregistered body is not a legal entity which can be sued in its own name. If that is so, is the amendment of the nature sought in the present case an attempt to describe the defendant correctly? In my opinion, counsel for the respondent is right in his contention that it is not a case of misdescription at all. He relied on the distinction between a firm and a club and relied on the decision in *Re Arbn. Munshilal and Sons Vs. Modi Bros.* on the observations appearing at page 589. Das, J. as he then was, said, "I do not think that the notion of a firm name or a joint family business name ought to be extended to a Club name. A club name is not regarded as a compendious name in the sense that a firm name or the trading name of a joint Hindu family business is regarded by lawyers and business people." This observation was sought to be answered by counsel for the

petitioner by submitting that I should not follow it. I am unable to accept such submission. This observation is entitled to great respect.

6. Counsel for the respondent relied on the decision in *Mercantile Marine Service Association v. Toms & Ors.*, (7) (1916) 2 KB 243 in support of his contention that an unincorporated body having been sued and amendment to bring on record the defendants in a representative capacity should not be allowed. The Imperial Merchant Service Guild was an unregistered association. It had 15,000 members. It was regulated by its rules and its business and affairs were conducted by its managing committee. The plaintiffs in that case asked for an order that the defendants T., M. and G. who were Chairman, Secretary and Vice-Chairman respectively "be appointed to represent all other members in an action of libel." The plaintiffs in the next placed asked for leave to add as defendants A. K. and A. W. who with M. were trustees of the invested funds of the guild. It should be stated here that in that case the defendant T. G and M had been sued "on their own behalf and on behalf of all other members of the I.M. Service Guild". Swinfen Eady, L.J. said that if this were merely an application for leave to add defendants there would be no objection to it. The plaintiff there asked for an order that the defendants might be appointed to represent all the members of the Guild. The decision in *Wood v. McCarthy* (8) (1893) 1 QB 775 and the decision in *Temperton v. Russell* (1893) 1 QB 435 were referred to. It was held that in cases of action of tort there was no application for bringing on record the chairman, the vice-chairman and the Secretary in the representative capacity.

7. Counsel for the respondent contended that the proposed amendments in the present case would have first the effect of converting the suit into an entirely different suit by bringing on record different parties in different capacities in place of a defendant who is not a legal entity, and secondly, of relating back a cause of action by amendment when the cause of action is barred by limitation on the date of taking out of the summons, and thirdly, of bringing into record as defendants in a representative capacity persons who had nothing to do with the decision of the Stewards. He also relied on the decision in *Campbell v. Thompson & Anr.*, (9) 1953 (1) QBD 445 in support of his contention that as to unincorporated Members" Club the proposed defendants in the representative capacity could not first represent members who might not have been members at the relevant time and secondly they would not represent the Stewards who entered into the adjudication pursuant to the Racing Rules. In my opinion counsel for the defendant is right in his contentions. To my mind the present application is misconceived. I hold that there is no mis-description and it is not curable by amendment as contended for. Secondly, I hold that allowing the application would be doing incalculable harm to the defendants by reason of the plea of limitation. Thirdly, the bringing into record the defendants in a representative capacity would be to change the suit into one of an entirely different character. For these reasons I am of opinion that the application fails. The application is dismissed with costs. Certified for counsel.