

(1981) 06 KAR CK 0025
In the Karnataka High Court
Case No : CRP 1245/81

Sri Swamy Vivekananda Vidyashala, Secretary and Another	APPELLANT
Vs	
S.N. Thunga Bai and Another	RESPONDENT

Date of Decision : 12-06-1981

Acts Referred:

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

Citation : (1981) 2 KarLJ 286

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. The respondents, who have initiated a proceeding against these petitioners under the provisions of the Karnataka Rent Control Act, 1961, in H.R.C. No. 309 of 1975 on the file of the VIII Addl. Civil Judge, Bangalore City, sought for an amendment of the cause title of their petition to make certain corrections in the addresses of these petitioners who are arrayed as opponents therein That application was allowed. The petitioners are challenging the correctness of that order (vide the order dated 6-8-1980 of the court below on I.A. 7 and 8).
2. The contention of the petitioners in this petition is that the amendment has completely changed the very nature of the case and the order of the Court below permitting such an amendment was in excess of the powers conferred on it under Or. VI, R. 17 CPC.
3. Now, under Or. VI, R. 17 an amendment of pleading should not be permitted if such an amendment, (i) is not necessary for deciding the real question in controversy; (ii) takes away from the defendant a legal right which has accrued to him by lapse of time; (iii) introduces a totally different, new, and inconsistent case or in effect it substitutes one distinct cause of action for another or changes the character of the suit; or (iv) if the application is not made in good faith.
4. In the instant case what the landlords say is that there has been a misdescription of the tenants in their application, that that was required to be corrected and, therefore, they had made that request. The parties, who are arrayed as respondents to the petition in the court below, are: (i) the Secretary,

Sri Swamy Vivekananda Vidyashala and (ii) the Headmaster, Sri Swamy Vivekananda Vidyashala According to the landlords, though the persons who had taken this premises on lease and were in occupation of the same were the Secretary and the Head-Master of that institution, the name of the institution is not Sri Swamy Vivekananda Vidyashala but is Sri Swamy Vivekananda Education and Cultural Society. He requested that the words Sri Swamy Vivekananda Vidyashala appearing after the words the Secretary and the Head Master respectively in the cause-title be struck off and in the place of those words "Sri Swamy Vivekananda Education and Cultural Society" be added. Further, he seeks a consequential amendment in para 4 of the petition as set out in his application seeking the amendment.

5. What may amount to misdescription of the party is stated as follows in M.B. Sirkar and Sons v. Powell & Co., AIR 1956 Cal. 60, (in para-15).

"A case can properly be said to be a case of misdescription when the party, really intended to be impleaded, had always been the same and such intention appeared clearly from the body of the plaint in spite of the inaccurate description in the cause title and what an amendment does, in such cases, is not to add a new party to the suit or substitute a new party for the original one, but to make the identity of the party originally impleaded clearer by amending or rectifying the inaccurate description. When the same person, whether an individual or a legal entity, remains the defendant but only the name is altered, there is a case of amending a misdescription. But where a new legal entity is substituted for another, it cannot correctly be said that the original error was a mere misdescription and that, by the amendment, no change of a substantial character affecting the right of any party is being effected."

In this connection the landlord's say that it was the Secretary of that institution and the Head-Master of that school who had negotiated and taken this premises on lease assumes significance As persons who had obtained the premises on lease they were already on record. It is nobody's case that Sri Swami Vivekananda Vidyashala is a legal entity. The legal entity is Sri Swami Vivekananda Education and Cultural Society. There is no substitution of one legal entity in the place of another already brought on record. In the circumstances we can say that in the instant case there was only a misdescription of the tenants and by this amendment that is sought to be rectified.

6. The power of courts to allow amendments under Or. 6, R. 17 also came up for consideration in Kurapati Venkata v. Thondapu Ramaswami & Co., AIR 1964 SC 818. In that case a receiver had been authorised by the order of a Court to collect the debts due to a firm. Discharging his functions as a receiver he had to file a suit and he did file in his capacity as the receiver describing himself in the plaint (as the plaintiff) thus: "I Suryanarayana Garu, receiver appointed in O.S. No. 275 of 1948. on the file of the District Munsiff's Court, Guntur". The defendant in that suit raised a plea in his written statement that the suit was untenable as having been filed by the receiver in his own right and not on behalf

of the firm to collect whose debts the Court had appointed this receiver. It was further contended that the suit was barred by time. In view of this plea of the defendant, the plaintiff amended the plaint with the leave of the Court making a change in the cause title in the plaint thus: "M/s. Thondapu Ramaswami & Co represented by I, Sri Suryanarayana Garu, receiver appointed in O.S. No. 275 of 1948, on the file of the District Munsiff's Court, Guntur". The trial Court dismissed the suit on the ground that I, Suryanarayana was not competent to institute the suit in his capacity as a receiver in O.S. No 275 of 1948; that the amendment had been made beyond the period of limitation and that, therefore, the suit was barred by time. On appeal by the plaintiff the High Court was of the view that the receiver could have filed the suit in his own name and that even otherwise the misdescription of the plaintiff in the plaint having been corrected by an appropriate amendment with the leave of the court, the suit was not bad and was not liable to be dismissed as held by the trial Court. Upholding this view of the High Court the Supreme Court has observed as follows (at para-13):

"The High Court has observed that even assuming that it would have been more appropriate for the receiver to show in the cause title that it was the firm which was the real plaintiff and that the firm was suing through him, it was merely a case of misdescription and that the plaint could be amended at any time for the purpose of showing the correct description of the plaintiff. We agree with the High Court that where there is a misdescription of parties it is open to the court to allow an amendment of the plaint at any time and the question of limitation would not arise in such a case."

In the instant case admittedly no question of limitation is involved. Only the misdescription of the respondents is permitted to be corrected Taking all these aspects into consideration I feel that the Court below has rightly allowed the amendment sought for and this is not a fit case for admission Hence, this petition is dismissed.