

(2001) 04 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : OMP No. 366 of 2000 in C.S. No. of 1999

Swaran Singh

APPELLANT

Vs

The Punjab Kesari and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Limitation Act, 1963 — Article 75

Citation : (2002) 3 RCR(Civil) 778 : (2001) 3 ShimLC 180

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Ravi Bakshi, for the Defendant No. 1 and Pritam Singh, for Defendant Nos. 3 to 5, for the Respondent

Judgement

M.R. Verma, J.—This is an application moved by the applicant/Plaintiff (hereafter referred to as the "Plaintiff") under Order 6 Rule 17 read with Section 151 of the CPC praying for amendment of plaint on the grounds that because of typographical mistake the name of Defendant No. 4 has wrongly been typed as "Jagdish Ram Kaundal" instead of "Jagat Ram Kaumdal" and that such mistake came to notice immediately before filing of this application, therefore, the necessary correction of the name of Defendant No. 4 may be allowed and that non-applicant/Defendant No. 1 (hereafter referred to as "D-I") had raised the objection that such Defendant could not be sued through Editor because the "Punjab Kesari is the title of the newspaper registered under the name and style of Hind Samachar Limited Company incorporated under the Companies Act and while maintaining that Editor can be sued through the title name also it is averred that in view of the disclosure made by D-I, it is "necessary to add the said Company as Defendant No. 1 instead of the name earlier mentioned" and that such amendment is necessary for the purpose of determining the real question in controversy between the parties, therefore, the plaint may be ordered to be suitably amended.

2. The application has been contested by the Defendant on the grounds that suit by now has become barred by limitation and the Plaintiff, therefore, cannot implead a legal person against whom he has lost his remedy due to law of limitation and otherwise the application is bad for delay and laches. It has further been averred that the suit has been wrongly filed against a non-entity, therefore, the plaint is liable to be rejected and in view of the print line describing the particulars of the newspaper, it would have been clear to the Plaintiff as to against whom the suit lies but he had not cared to read such print line and that the remedy of the Plaintiff against the Hind Samachar Limited sought to be added as a party Defendant No. 1, has now become time-barred.

3. I have heard the learned Counsel for the parties and have also gone through the material on record.

4. The brief facts giving rise to the filing of the present application are that the Plaintiff has instituted the suit against the Defendants for a decree in the sum of Rs. 5,05,000 on account of compensation for publishing a defamatory news item against him in the Punjab Kesari dated 23. 11.1997 and the Ajeet Samachar dated 24.11.1997 which is pending disposal. In the written statement the D-I, i.e. the Punjab Kesari through its Editor raised the objection regarding mis-joinder of Defendant No. 1 as a party to the suit on the ground that the Punjab Kesari is the title of a newspaper registered with the Registrar of Newspapers for India and owned by the Hind Samachar Limited Company, a Company registered under the Companies Act and this is not a person and a legal entity, therefore, cannot be sued. It is under these circumstances that the application for amendment has been moved.

5. It was contended by the learned Counsel for the Plaintiff that the suit could be laid as it has been framed but as an abundant caution, he has moved the present application to add the Hind Samachar Ltd. owner of the concerned newspaper as a party to the suit and to rectify a bona fide mistake resulting in mis-description of the party and by the present application such mis-description of the party is sought to be rectified.

6. It is evident from the contents of the application which though at one stage states that the name of the Hind Samachar Ltd. Co. is to be added as a Defendant and the proposed amended memo of the parties that the Plaintiff is not praying for addition of a party but is in fact praying for substitution of the Hind Samachar Ltd. Cot in place of present D-I.

7. In view of the contention raised for the Plaintiff that the Defendant can be sued as it has been sued, it will not be proper to make any comment in this regard at this stage. However, it is clear that what is prayed for in the application is not rectification of mis-description but substitution of the name of the real party in place of D-I.

8. While dealing with the question as to what is mis-description of a Defendant and the scope of amendment of plaint on the ground of mis-description of the

Defendant, the Calcutta High Court in *M.B. Sirkar and Sons Vs. Powell and Co.*, has held as follows:

(15) The real controversy before us, however, was on the question as to whether there had been only a misdescription in the original plaint and whether the same party was not being sought to be described by a new name and appellation. It is true that if the case be one of misdescription, no question of limitation or destruction of any valuable right already accrued to the Appellant company arises. But it will be useful to consider first what "misdescription" really means. 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 affected. Common examples of misdescription are cases where a Plaintiff intending to sue a railway, sues it by its Agent without, however, claiming any person relief against him but asking for relief against the railway alone, or cases where a Plaintiff, intending to sue a municipality, does so by its name and not by the Chairman and the Commissioners, as the law requires. Substitution of a company for a firm, however, appears to me to be a very different proposition.

(16) Where such a substitution is made, the amendment is thought necessary not "for the purpose of determining the real question in controversy between the parties" as contemplated by Order 6 Rule 17, but "for the purpose of determining the controversy between the real parties."

9. As already stated here-in-above, the Plaintiff by this application is seeking to substitute a juristic person in place of a non-juristic person and not making the identity of the party already impleaded clearer by amending the inaccurate description of the party already impleaded.

10. The application raises yet another question, i.e. whether by way of amendment a party can be allowed to be impleaded as a Defendant in a suit where the claim in the suit has become time-barred against such party? It is well settled that where a valuable right has accrued to the opponent by lapse of time, an application for amendment which may destroy such right and which cannot be compensated by costs, cannot be allowed.

11. The Hon'ble Apex Court while dealing with the scope of Order 6 Rule 17 of the CPC in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*,

held as follows:

We think that the correct principles were enunciated by Batchelor, J. in his judgment in the same case, viz., 33 Bom. 644 at page 655 (c) when he said at pp. 649-650 :

All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties...but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a Plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the Defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side, or can it not?

12. In the case in hand, the alleged defamatory news item was published in the Punjab Kesari on 23.11.1997. In view of Article 75 of Schedule- I of the Limitation Act, 1963, the prescribed period for suing for compensation for libel is one year from the date of publication of the libel. The suit itself has been instituted on December 8, 1998. During the pendency of the suit the present application has been moved on August 11, 2000 when the claim against the party, now sought to be impleaded, had become hopelessly time-barred. Thus, a valuable right has apparently accrued in favour of the party now sought to be impleaded and such a right which debars the remedy of the Plaintiff against the party sought to be impleaded now is incapable of being compensated in terms of costs. Even on this score the amendment regarding substituting of the Hind Samachar Limited as a party Defendant to the suit cannot be allowed.

13. In so far as the correction of the name of Defendant No. 4 is concerned, it is apparently a case of typographical error or at the most misdescription of the party, therefore, this part of the prayer made in the application deserves to be allowed.

14. As a result, the Plaintiff is permitted to correct the name of Defendant No. 4 as prayed for but the remaining amendment as prayed for is dis-allowed. The application is accordingly disposed of.