

(1989) 07 MAD CK 0031
In the Madras High Court

The Correspondent, The Americal Advent Mission School	APPELLANT
Vs	
J. Jeevanandam (since died) and Others	RESPONDENT

Date of Decision : 27-07-1989

Acts Referred:

Citation : (1989) 2 LW 245 : (1989) 2 MLJ 207

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This Letters Patent Appeal is directed against the judgment and decree of Shanmukham J., in Appeal No. 23 of 1979. That Appeal, in its turn, was directed against the judgment and decree in O.S. No. 619 of 1970, on the file of the Second Assistant Judge, City Civil Court, Madras. The Original respondent in this Letters Patent Appeal died and his legal representatives have been brought on record. The Original respondent was the plaintiff in the suit. The appellant herein was the defendant in the suit. We propose to refer to the parties as per their array in the suit. The plaintiff wanted a declaration that the order of dismissal passed against him from the service of the defendant on 5.6.1967 is void and of no effect and for consequential direction that the plaintiff should be paid a sum of Rs. 10,000 as damages. In view of the limited scope of the points that have come up for consideration in this Letters Patent Appeal, we do not propose to traverse upon the entire gamut of facts of the case. On the pleadings of the parties, the first Court framed the following issues:

- (1) Whether the charge memo was issued on the report of the Deputy Inspector of Schools?
- (2) Whether the enquiry held by the defendant was against the principles of natural justice and is vitiated as alleged in Para. 16 of the plaint?
- (3) Whether the order of dismissal of the plaintiff dated 5.6.1967 is void, illegal and unenforceable as stated in Para. 24 of the plaint?
- (4) Whether the suit is not maintainable without any consequential prayer?

(5) Whether the plaintiff cannot file this suit as Section 39 of the Specific Relief Act is a bar?

(6) To what relief?

On Issue No. 1, the first Court held that the charge memorandum was issued on the report of the Deputy Inspector of Schools. On issue No. 2, the First Court's finding is to the effect that the enquiry held by the defendant was not against the principles of natural justice. As a result of this finding on issue No. 2, the first Court held on issue No. 3, that the dismissal of the plaintiff is not void. The First Court held issue No. 4 against the defendant. Issue No. 5 was found in favour of the plaintiff. The First Court dismissed the suit with costs in view of its findings on. issue Nos. 1 to 3. The plaintiff appealed in Appeal No. 23 of 1979 to this Court, and that came to be dealt with by Shanmukham, J. Before the learned single Judge, the contention with regard to limitation was pressed forth by the defendant with reference to the claim for damages, put forward by the plaintiff. The learned single Judge, opining that the claim for damages is not the principal relief and it is only a consequential relief and hence the question of limitation would not come into play, held that the relief for damages was not barred by time. The learned single Judge held, on his own assessment of the factual materials placed in the case, that there had been a violation of the principles of natural justice. As a result, the learned single Judge allowed the Appeal, setting aside the judgment and decree of the first Court, and decreed the suit of the plaintiff with costs throughout.

2. As already noted, the plaintiff, original respondent in the Letters Patent Appeal, died pending the Letters Patent Appeal and his legal representatives have been brought on record. In this Letters Patent Appeal, Mr. Tarulraj, learned Counsel for the defendant, would submit that so far as the relief of declaration, asked for by the plaintiff, is concerned, the plaintiff having died pending the Letters Patent Appeal, if at all we are inclined to consider the judgment and decree passed by the learned single Judge and as well as those of First Court that could be done only with reference to the relief of damages and the relief of declaration does not survive in favour of the legal representatives of the plaintiff who is no more. Learned Counsel for the defendant would say that in view of this subsequent event, it would be unnecessary to go into and adjudicate the question of declaration asked for by the plaintiff. Learned Counsel for the defendant expatiated this contention further, and we are dealing it as here-under. Learned Counsel for the defendant, of course, did not give up his contentions on merits over the question as to whether the order of dismissal of the plaintiff was void and was of no effect on account of violation of principles of natural justice. The plaintiff sought for a declaration that the order of dismissal passed against him is void and is of no effect. The plaintiff also wanted damages for wrongful dismissal. The plaintiff had not reserved his rights regarding and obtained the leave of the Court to ask for any other relief by separate process subsequently on the basis of the very same order of dismissal. It was not even claimed by the

plaintiff that apart from the reliefs asked for in the suit, any other relief had to be agitated for and obtained before any other forum. Hence, we have to take it that all the reliefs, which the plaintiff would have to ask for, on the ground of the order of dismissal, have been asked for in the suit itself. The plaintiff having died pending the Letters Patent Appeal, the question of declaring the order of dismissal passed against the plaintiff as void and as of no effect has practically lost is significant, except for the purpose of considering the relief of damages. We find that there is a legal hurdle with regard to countenancing the relief of damages, in view of the contention of the learned Counsel for the defendant that such a relief is barred by limitation and we are inclined to sustain it. The declaration as such cannot be availed if by the legal representatives of the plaintiff for any purpose other than getting the relief of damages. But, the relief of damages, asked for by the plaintiff, could not have countenance on account of the bar limitation. We are advertising to that aspect presently. If the relief of damages could not be granted, then a bare declaration could be of no avail at all, to the legal representatives of the plaintiff, who is no more, since the legal representatives of the plaintiff could not work out that relief, except for the purpose of advancing the claim for damages which we are obliged to negative sustaining the plea of limitation put forth by the defendant. In this view of ours of the matter, there is no need to canvass the findings of the learned single Judge and those of the first Court on the question as to whether the order of dismissal of the plaintiff was void and was of no effect. Those findings have practically become otiose in view of the features adverted to by us above. It would be futile process to adjudicate over that question, because as the matter stands the relief of declaration cannot be availed of and worked out by the legal representatives of the deceased plaintiff (for any purpose). For the reasons to be expressed hereinafter, sustaining the plea of limitation, put forth by the defendant, we are negating the relief of damages also. Thus, the relief of declaration has become infructuous. Hence, we find that it would be appropriate to vacate and we do vacate all the findings on this question, both by the first Court and by the learned single Judge, while we negative the relief of declaration, taking note of the subsequent event, and for the reasons expressed by us above.

3. Now we shall advert to the question of relief of damages. We are proceeding with this question on the assumption that the plaintiff is entitled to the declaration that the order of dismissal passed against him was void and was of no effect. The dismissal of the plaintiff as such took place on 5.6.1967. The suit was laid in the year 1969. The application for amendment introducing the relief for damages was taken on 20.3.1974. That application was allowed on 29.3.1974. On the date of the presentation of the application, the relief for damages was patently barred. The aspect was sought to be got over before the learned single Judge by pointing out that the relief of damages is only consequential to the principal relief of declaration. The learned single Judge accepted this line of thinking and held there is no question of bar of limitation.

We are not able to subscribe our support to this view of the learned single Judge, our reasons being as follows: We are not dealing with an application for amendment. By merely allowing an application for amendment, there is no adjudication of the merits of the amended pleas introduced. The merits of the amended pleas have got to be adjudicated upon, after allowing the opposite side to put forward the additional pleadings in answer to the same and certainly the additional pleadings may take in also the plea of bar of limitation, as has been done in the present case. If at the time of allowing the amendment, the Court has directed that the amended pleadings shall be deemed to have been incorporated in the original plaint from a particular date, in spite of the contention at that stage that the amended pleadings would introduce barred claims, and the Court giving a decision as to the effect of the amendment on limitation, that would be a different matter. In the present case, there appears to be no such direction, given by the first Court, and the learned Counsel appearing for the legal representatives of the deceased plaintiff does not claim the position to be otherwise. The general rule is that a party should not be allowed by amendment to introduce a new case, or a new cause of action or a new relief, when the suit on the new case, or cause of action or for the new relief is barred on the date of amendment. But, there are exceptions to the rule, and the Court may in stated appropriate cases, allow amendment even after the statutory period of limitation. Let us not deal in detail with those exceptional circumstances for the purpose of the present case, for in the present case, the amendment had been already allowed and we are concerned with the effect of amendment on limitation. When a contention is being raised about the law of limitation with regard to the amendments sought to be introduced, the Court, while considering the application for amendment, if it is inclined to allow it, must also consider the question of effect of amendments on limitation and give specific directions as to the date on which the amendments shall take effect. If no such direction is given, then such amendments must be held to be effective "only from the date of the amendment application. There could be cases, which are not of amendments properly so called, but a case of addition of barred reliefs into the plaint which did not project them at all, when it was originally laid, as in the present case, and which the Court, as exceptional cases, considers it just and proper to introduce at a later stage. Hence, specific directions, as to their effect on limitation, are required.

4. The relief of declaration and the relief of damages may be stated to be interconnected. The relief of damages may follow the relief of declaration. But, they are distinct and separate reliefs. The plaintiff would have asked for both or the plaintiff could be content to ask for the relief of declaration only. The latter was the course adopted by the plaintiff in the present case. At the time when the plaint was presented, the plaintiff did not ask for the relief of damages and he was content to ask for only the relief of declaration. These are two different reliefs, though they emerged from the same cause of action. Here is a case of omission to ask for the relief of damages at the time when the suit was laid. At

the time when the amendment petition was taken out, the relief of damages had become barred by limitation. To the attention of the learned single Judge, the principle that claims of the present nature, when introduced by way of amendments, cannot automatically relate back to the date of the presentation of the original plaint, but only to the date of the amendment application, was drawn. But, the learned single Judge, on the ground that the relief of damages asked for is only consequential, did not follow the principle. There is a ruling of a Bench of the High Court of Calcutta in *Maindra Chandra Nandi Bhahadur v. Rangalal Mandal and Ors.* AIR 1918 Cal. 443. Where there was an introduction of new lands, by way of amendment and the learned Judges held that as regards such lands, the suit must be taken to have been instituted on the date of the amendment application. The view of the Bench of the High Court of Calcutta has been followed of a Bench of the High Court of Rajasthan in *The State of Rajasthan and Others Vs. Rao Dhir Singh and Others*, . Here, though there was the same cause of action, there were two reliefs, available to the plaintiff. The choice was that of the plaintiff to ask for both or any one of them. The plaintiff chose to ask for only case of them and that was his wisdom. The fact that the other relief would follow from the grant of the relief, already asked for, is no ground to forget about the aspect of limitation with regard to that specific relief, sought to be introduced only at the subsequent stage of the suit. Hence, we are not able to appreciate the view of the learned single Judge that the plea of limitation has to be ignored on the ground that the relief of damages is consequential to the relief of declaration. Our discussion of the law and its application to the facts of the case persuades us to accept this contention of the learned Counsel for the defendant. The result is we must hold that the plaintiff and now his legal representatives could not get the relief of damages, because the law of limitation disabled them from doing so. It has been already noted that the relief of declaration could not be worked out at all by the legal representatives of the deceased plaintiff and has become infructuous.

5. For all the above reasons, we allow this Letters Patent Appeal; set aside the judgment and decree of the learned single Judge in Appeal No. 23 of 1979 and we dismiss the suit of the plaintiff. We must record here that the question of limitation was not at all adjudicated upon by the first Court and that the learned single Judge alone has adverted to this question and rendered his views. In the peculiar facts and circumstances of the case, we direct the parties to bear their respective costs throughout. The legal representatives of the plaintiff shall pay the court-fees due on the Memorandum of Appeal in Appeal No. 23 or 1979 from and out of the estate of the deceased plaintiff.