
(1992) 02 AP CK 0027
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4092 of 91

The Greater Alwal Allied Service Association	APPELLANT
Vs	
The Alwal Municipality	RESPONDENT

Date of Decision : 03-02-1992

Acts Referred:

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

Citation : (1992) 1 ALT 352 : (1992) 1 APLJ 114

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : K. Mohan and S. Nagesh Reddy, for the Appellant; Gopal and G. Naik, for the Respondent

Final Decision : Allowed

Judgement

Immaneni Panduranga Rao, J.—This revision is filed by the plaintiff-Association challenging the order of the learned District Munsif, Medchal refusing to amend the plaint.

2. Originally the suit was filed for a declaration that the notification dt. 18-7-89 issued by the respondent-Municipality enhancing the water cess is illegal and for an injunction restraining the respondent from collecting the enhanced water cess by virtue of the said notification.

3. It is stated that after the filing of the suit and receiving the order of interim injunction the respondent has issued a fresh notification dt.28-9-91 on the same terms as the notification dt.18-7-91 whereby the water cess has been enhanced from Rs. 25/- to Rs. 40/- with effect from 1-12-91.

4. The plaintiff Association filed I.A. No. 420 of 1991 for seeking amendment of the plaint to the effect that the second notification issued by the respondent Municipality is also illegal as the effect of the said notification is to frustrate the interim orders obtained by the plaintiff. The learned District Munsif, Medchal dismissed the petition on the ground that by allowing the amendment, the

petitioner would be entitled for relief which is beyond the scope of the original suit filed by the petitioner which is not permissible in law.

5. Normally no doubt that view is perfectly correct and the court is not empowered to introduce by way of amendment a fresh cause of action. But in this case the allegation made in the affidavit that the subsequent notification dated 28-9-91 does not differ in any manner from the earlier notification dt. 18-7-9, except with regard to the date is not disputed. The plaintiffs allegation is that the subsequent notification is issued only to get over the interim injunction issued by the court with regard to the collection of excess water case.

6. The learned counsel for the respondent argued that since the earlier notification is cancelled and a subsequent notification is issued it is open to the plaintiff to file a fresh suit for declaration and injunction in respect of the second notification. But the learned counsel for the revision petitioner rightly submitted that if the respondent municipality resorts to cancelling each and every notification which is impugned in the court and issues a fresh notification there will be no end for the litigation because whenever a notification is cancelled and a fresh notification is issued the plaintiff will be obliged to file a fresh suit challenging each subsequent notification.

7. I find force in the submission made by the learned counsel for the petitioner. Under the above peculiar circumstances I hold that the court is entitled to take notice of subsequent events and effect necessary amendments to shorten litigation to preserve the rights of both the parties and to subserve the ends of justice.

8. In support of the view taken by me above I rely upon a Division Bench decision of Calcutta High Court in *Ayesha Khatoon v. Durga Sahaya* AIR 1979 Cal. 108. In that case the landlord filed a suit for ejectment of the tenant on the ground of forfeiture of lease. The suit was dismissed and the landlord preferred an appeal. Pending appeal the period of lease expired and the landlord applied for amendment of plaint by claiming relief on the additional ground of expiry of lease. The Division Bench held that in proper cases the court is entitled to take note of subsequent events and grant relief to the parties accordingly if by so doing it can shorten litigation and best attain the ends of justice. Applying the above decision to the facts of this case. I hold that since the subsequent notification dated 28-9-91 is similar in all respects to the earlier notification except with regard to the date it is just and expedient to permit the petitioner to amend the plaint suitably challenging the subsequent notification also in order to shorten the litigation. Otherwise as submitted by the learned counsel for the petitioner the respondent Municipality can try to defeat the plaintiff's case by cancelling the notification and issuing a fresh notification as was done on 28-9-91 and thereby defeating the rights of the plaintiff.

9. It is however seen from the allegations in the counter-affidavit filed in the lower court that the Civil Court has no jurisdiction to challenge the activities and

functioning of the Municipality and that Section 330(5) of the Andhra Pradesh Municipalities Act operates as a bar for the maintainability of the suit. If there is such a statutory bar for the maintainability of the suit the question with regard to the maintainability of the suit can be decided as a pure question of law without the necessity of recording voluminous oral evidence and marking documents. Such an objection as to the maintainability of the suit if tenable goes to the very root of the case. I therefore hold that the issue with regard to the maintainability of the suit should be decided as a preliminary issue as a step to shorten the litigation.

10. In the result the civil revision petition is allowed directing the learned District Munsif Medchal to permit the plaintiff to amend the plaint as prayed for in I.A. No. 420 of 1991. After giving an opportunity to the defendant Municipality to file an additional written statement for the amended plaint the learned District Munsif is further directed to try the issue with regard to the maintainability of the suit as a preliminary issue. There shall however be no order as to costs.