
(1972) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petns. No's. 59 and 60 of 1971

Yarlagadda Veeraiah

APPELLANT

Vs

Kawali Mining Corporation and Others

RESPONDENT

Date of Decision : 21-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Stamp Act, 1899 — Section 35

Citation : AIR 1973 AP 170

Hon'ble Judges : Sriramulu, J

Bench : Single Bench

Advocate : R.V. Vidya Sagar, for the Appellant; A. Venkatarami Reddi, for the Respondent

Judgement

1. These two Civil Revision Petitions are directed against common order by the Subordinate Judge, Chirala, in Interlocutory Applications Nos. 26 and 29 of 1970 in O. S. Nos. 5 and 10 of 1970. Since both the Civil Revision Petitions give rise to common question of law, they are disposed of by a common order.

2. The material facts leading to the filing of these Civil Revision Petitions may briefly stated. Defendant No. 12 as the Managing Partner of the Defendant No. 1, executed two promissory notes one in favour of Yarlagadda Baliah and the other in favour of Indlamudi Veeriah, Four one anna denomination stamps were affixed on each of those promissory notes instead of 0.25 paise stamps as required by law. Since the promissors did not pay the moneys due by them, the promisee Yarlagadda Baliah and Indlamudi Veeriah, filed suits for the recovery of moneys due to them under those promissory notes. Those original suits were re-numbered as O. S. No. 5 of 1970 and No. 10 of 1970 on the file of the Subordinate Judge, Chirala. In their respective written statements the defendants inter alia raised an objection that the suit promissory notes were not duly stamped according to law and hence, on that account inadmissible in evidence u/s 35 of the Stamp Act. In O. S. No. 5 of 1970 the aforesaid objection

raised by the defendants was overruled by the Subordinate Judge, who, by his order dated 17-12-1963, held that the suit promissory note was duly stamped and was admissible in evidence. The defendants carried the matter in revision to this court in C. R. P. No. 613 of 1964. A Division Bench of this Court allowed the said Revision petition holding that the suit promissory note was not duly stamped and was, consequently, inadmissible in evidence. The question whether the suit could be considered on the cause of action as stated in the plaint, or the plaintiff should be permitted to amend the plaint so as to fall back on the original cause of action, was left open to be decided by the trial Court.

3. In these circumstances, in both the Original Suit No. 5 of 1970 and O. S. No. 10 of 1970, the plaintiffs filed I. A. Nos. 26 and 29 of 1970 respectively for amendment of their plaints, so as to fall back on the original causes of action. The Subordinate Judge, Chirala, by his common order dated 13-1-1970 dismissed both the I. As. With costs, against which the present Civil Revision petitions are filed.

4. The learned counsel Sri R. V. Vidya Sagar, appearing for the petitioners, submitted that it is now well settled that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties, when they do not work injustice or prejudice to the other side, should be allowed. Courts have allowed amendments even at the stage of appeal, though the suits on the dates of amendment petitions were barred by limitation. The real controversy in these suits was, whether the respondents were indebted to the petitioners. The delay in filing the interlocutory applications for amendments of the plaints, was due to the fact that the lower Court had held the promissory notes as to be admissible in evidence, but the High Court reversed the view of the trial Court. Although the promissory notes are inadmissible in evidence as promissory notes, to prove the respondent's liability still they can be used and looked into for the collateral purposes as acknowledgments extending the periods of limitation for filing the suits on the basis of the original causes of action. Genuine claims should not be permitted for technical reasons by refusing permission to amend the plaints. In support of the above arguments, the learned counsel relied upon number of decided cases of the Supreme Court, this Court and various other High Courts.

5. On the other hand, the learned counsel appearing for the respondents submitted that the revision petitions are not maintainable, for the simple reason, that, even assuming that the lower court had taken an erroneous view of the law, this court would not, in the exercise of its revisional power, correct errors of law. Assuming these revision petitions are maintainable, still as a rule, amendments of plaints will not be permitted when the suits are barred on the dates of amendment petitions so as to deprive the defendants of a valuable defence of the plea of limitation. If amendments are allowed in such cases after long delays, the defendants will be prejudiced and it will work injustice to the opposite party. Therefore, the trial Judge rightly dismissed the amendment

petitions. No unstamped or insufficiently stamped promissory notes can be admitted in evidence u/s 35 of the Stamp Act, for any purpose whatever. Inadmissible promissory notes, cannot, as acknowledgments, extend the periods of limitation so as to bring the suits based on original causes of action within the time when they would actually be barred. The decisions relied upon by the learned counsel appearing for the petitioners are only cases where, on the dates of the amendment petitions, the suits were barred by limitation. The instant cases are those where the suits on the basis of the original causes of action are not only barred on the date of the amendment petitions, but also on the dates of filing the suit. Hence such amendments cannot be permitted in law. In support of this argument the learned counsel relied upon various decisions.

6. I will first decide the question of the maintainability of the revision petitions. What the Supreme Court has held in Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, is that the High Court while exercising its jurisdiction u/s 115 of the Civil Procedure Code, cannot correct errors of fact, however gross they may be even errors of law, unless those errors have got relation to the jurisdiction of the court or try the dispute itself.

7. The question of permitting or refusing to permit amendment of pleadings in my opinion, relates to the question of jurisdiction of the court to try the suit. If the court allows an amendment of pleadings when in law, it ought not to, it would mean that the court had assumed jurisdiction which did not vest in it. If the court wrongly refuses to permit an amendment, it would mean that the court had failed to exercise the jurisdiction vested in it. In either case, the question of amendment of pleadings relate to the jurisdiction of the court to try the suit, and hence the present Civil Revision Petitions are maintainable. The preliminary objection to the maintainability of the Civil Revision Petitions raised by the respondent's counsel, is, therefore, without substance and is, accordingly, rejected.

8. Before I consider the merits, some more facts are required to be stated.

9. The suit promissory note in O. S. No. 5 of 1970 was executed by the 2nd defendant on 17-2-1958 in renewal of an earlier promissory note dated 17-12-1955 for a sum of Rs. 6,800 /-. O. S. No. 5 of 1970 was filed in the proper court on 18-12-1961, i.e., on the last date of limitation from the date of the suit promissory note, 17-12-61, the preceding day being Sunday, a public holiday.

10. O. S. No. 10 of 1970 was filed on 16-12-1961 on the basis of the promissory note dated 16-12-1958 executed by defendant No. 2 in renewal of an earlier promissory note. It was stated that the loans are evidenced by entries in the account books. The suits were filed in 1961 and notwithstanding the defence raised by the defendants in their written statements that the suit promissory notes were not duly stamped and were inadmissible in evidence, the respective plaintiffs filed amendment petitions, i.e., I. A. Nos. 26 and 29 of 1970 in the year 1970. The learned Subordinate Judge observed that, in the complaints, the

respective plaintiffs did not refer to the original transactions of loan. The learned counsel Sri R. V. Vydy Sagar, disputed that observations of the Subordinate Judge. In one case the plaint copy has been shown to me, but was not filed as material paper. The plaint in the other suit was stated to be on the same terms. The plaint copies in both the suits have, however, not been filed in these Civil Revision Petitions, as material papers. To rely upon documents in Civil Revision Petitions, without filing copies of those documents is not a commendable practice. However, the question of correctness or otherwise of the observations of the Subordinate Judge need not be decided in these Civil Revision Petitions.

11. The learned Subordinate Judge dismissed the Interlocutory Applications observing that :-

".....If the petitioners are now allowed to amend the plaint and introduce original causes of action which are not originally pleaded in the plaint, it would amount to allowing the plaintiffs to bring fresh claims based on original consideration which had clearly become time barred"

12. The principles governing the amendments of pleading are now well established. In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, the Supreme Court laid down the following principles which govern the question of amendment of pleadings :-

".....All amendments ought to be allowed which satisfy the two conditions (a) 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. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but amendment would cause him an injury which would not be compensated in costs. It is merely a particular case of the general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of cause of action which since the institution of the suit had become barred by limitation the amendment must be refused ; to allow it would cause the defendant an injury which could not be compensated by costs by depriving him of good defence to the claim. The ultimate test therefore still remains the same, can the amendment be allowed injustice to the other side"

13. In *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, the Supreme Court held that :

".....It is no doubt true that courts would, as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a clear factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice....."

14. In *A.K. Gupta and Sons Vs. Damodar Valley Corporation*, the Supreme Court

held that :-

".....In the matter of allowing amendment of pleadings the general rule is that a party is not allowed by amendment to get up a new case or a new cause of action particularly when a suit on the new cause of action is barred. Where, however, the amendment does not constitute the addition of the new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts, the amendment is to be allowed even after the expiry of the statutory period of limitation....."

15. In *Konduru Seshu Reddi Vs. Vemareddy Rama Raghavareddy and Others*, , following principles laid down by the Supreme Court in the above two cases, this court allowed the amendments in appeal on payment of costs.

16. In *Pendyala Narasimham Vs. Pendyala Venkata Narasimha Rao*, , a Division Bench of this Court held that amendment should be permitted if special circumstances exist and even in a case where an alternative relief was claimed, provided it was in furtherance of justice and it did not involve the other side in real hardship.

17. To the same effect are the observations of Chandra Reddy, J. (as he then was) in *Rahamtulla v. Mastan Seth* 1956 ALT 806.

18. In *Nallapureddi Eswaramma v. P. Rangamma* 1969 (1) AnWR 242 Gopala Rao Ekbote, J. Observed that :-

".....It is true that Order VI, Rule 17, Civil Procedure Code, is wide enough to permit all such amendments although the claim of the plaintiff is time barred. But this is not a rule. It is an exception. Normally the defendant should not be deprived of his valuable right which has accrued to him on the basis of limitation....."

19. It is seen from the above cases that all amendments which are necessary for the purpose of determining the real question in controversy between the parties are to be allowed. If the amended claim is barred on the date of the amendment application, the amendment would not, normally be allowed, because it would work injustice to the other party and would deprive him of a valuable defence based on limitation, which cannot be compensated by costs. Such amendments can be allowed only if special circumstances exist, but not in ordinary circumstances. Amendments will not be allowed if a new case or cause of action is sought to be added after limitation, unless it is different or an additional approach to the same facts. These are the general principles governing the question of allowing or disallowing amendments of pleadings.

20. Before those general principles are applied to cases of amendment petitions, filed in cases where suit promissory notes are inadmissible in evidence, I would consider whether any or if so, for what purpose can an inadmissible promissory note be admitted in evidence ? Section 35 of the Stamp Act says that no instrument chargeable with duty shall be admitted in evidence for any purpose,

or shall be acted upon or registered, etc., unless such instrument is duly stamped. It is not disputed that the suit promissory notes were inadmissible in evidence. The language of the section is clear. If the Legislature wanted that unstamped or insufficiently stamped promissory notes are to be admitted in evidence for collateral purpose, it would have stated so in the section itself. I do not find anything in the section to that effect. A document requiring registration can be used for collateral purpose of proving the nature and character of possession u/s 48 of the Registration Act, but there is no such provision in the Stamp Act in regard to unstamped or insufficiently stamped documents.

21. An improperly stamped promissory note, which also contains a statement of amounts due on previous promissory notes, cannot be admitted in evidence to prove the amount of liability in order to save limitation in respect of the promissory notes previously executed. A long line of authorities in support of the above propositions is found at page 252 of the 3rd Edition of the Indian Stamp Act by K. Krishnamurthi. Hence I reject the contention of the learned counsel appearing for the petitioners that an inadmissible promissory note for a collateral purpose can be admitted in evidence.

22. The Full Bench decision of the Madras High Court in *The Official Assignee of Madras Vs. V.A. Kuppuswami Naidu and Others*, is a case where amendment was allowed for basing the claim on the original cause of action when the suit on the basis of the promissory note was found barred by limitation. That is not a case of falling back on the original cause of action on account of the inadmissibility of the promissory note in evidence. That decision does not therefore help the petitioners.

23. In *Ganga Ram Vs. Keshava Deo and Another*, a Division Bench of the Rajasthan High Court held that where, in a suit for the recovery of money on a promissory note, the promissory note is not admissible in evidence, the plaintiff can be permitted to amend the plaint so as to convert his suit on the original cause of action.

24. The court observed that " where a promissory note is inadmissible in evidence, the plaintiff can be permitted to base his claim on the original cause of action ", has been the subject-matter of controversy among various High Courts and those cases can be broadly classified into two (1) where the promissory note is executed in respect of an anterior claim and (2) where the loan is contemporaneous with the execution of the promissory note ; in respect of the first class of cases; the court observed that the law is now well settled that if a promissory note is not admissible in evidence, the said plaintiff can be permitted to fall back on the original cause of action, provided it is within the period of limitation.

25. To the same effect is the decision of *Siadat Ali Khan, J. of the Hyderabad High Court in Dhondi Emki Ram v. Hazari Vital AIR 1952 Hyd 137* and

Sadasivayya, J. of the Mysore High Court in N. Srivanna v. J. B. Thinmaiah AIR 1964 Mys 56.

26. Thus, in cases where the suit promissory notes are executed in renewal of earlier promissory notes, amendment can be allowed so as to fall back on the original cause of action, provided the suit on the amended cause of action is not barred. If, on the date of the amendment petition, the claim of the amended cause of action can be allowed not in the original circumstances but if there exist special circumstances. No such special circumstances exist in these cases.

27. Apart from the fact that the suits on the amended causes of action are barred on the dates of the amendment petition, they are also, in these cases, barred on the dates of suits. In such cases, it has been held by Wallace, J. In Dr. Mir Anwaruddin Vs. Fathima Bi Abidin and Mr. M.A.T. Coelho, that where a suit is brought on a promissory note which is unstamped, the plaintiff, if the suit on the original cause of action is not barred, may be allowed to fall back on the original cause of action by amending the plaint.

28. A Division Bench of Oudh High Court, in AIR 1933 18 (Oudh) held that a suit on an insufficiently stamped promissory note cannot be decreed even on admission by the defendant of the genuineness of the promissory note, if the suit on the previous promissory note, of which the subsequent promissory note was a renewal, was barred by time.

29. It is, therefore, manifest that in a suit based on a promissory note which is inadmissible in evidence for want of proper stamp, amendment so as to fall back on the original cause of action cannot be permitted if the suit on the basis of the earlier promissory note, in renewal of which the suit promissory note was executed, is barred, either on the date of a suit or on the date of the amendment petition, and particularly in the latter case, when no special circumstances exist for allowing the amendment. If such amendments are allowed, it would work injustice to the other side which cannot be compensated by costs, and the defendant would be deprived of a valuable defence based on limitation.

30. The Subordinate Judge was, therefore right in dismissing the amendment petitions. The Civil Revision Petitions fail and are dismissed with costs in C. R. P. No. 59 of 1970.

31. Order accordingly.