
(1993) 09 BOM CK 0017

In the Bombay High Court

Case No : Civil Rev. Application No. 713 of 1993

Zebunnissa and Another

APPELLANT

Vs

Faiyajuddin through LRs. and Another

RESPONDENT

Date of Decision : 30-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1995) 1 DMC 322

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Advocate : M.A. Kulkarni, for the Appellant; S. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Mane, J.—This revision application arises out of an order dated 11.6.1993 passed by the learned Civil Judge J.D., Ambajogai, rejecting the plaintiffs' application Exhibit 64/D for amendment of the plaint.

2. The plaintiff No. 1 filed a suit against her husband Faizuddin Abdul Wahed Kazi for maintenance for herself and for her minor son-plaintiff No. 2. In the plaint, the plaintiffs have averred that the plaintiff No. 1 is the legally wedded wife of the defendant No. 1 and that the plaintiff No. 2 is one of four children begotten from the defendant to the plaintiff No. 1. In 1975, she claimed maintenance u/s 125 of the Code of Criminal Procedure by filing Misc. Application No. 78/1975. In that application, the defendant No. 1 agreed to discharge his obligations to maintain the plaintiffs and entered into a compromise on 24.1.1977, It is the plaintiffs' case that in spite of that, the defendant No. 1. did not provide proper maintenance to the plaintiffs. On the contrary, the defendant No. 1 went on spending money on his vices. He left only one land, namely, land bearing gut No. 453. Very recently, the plaintiffs, however, learnt that the defendant No. 1 also agreed to sell the land to the defendant No. 2 and also intended to dispose of a residential house. The plaintiffs' filed the present suit against the defendants and

asked for injunction restraining the defendant No. 1 from disposing of the aforesaid properties else, the plaintiffs would be destitute and deprived of their legal right of maintenance. In the suit, besides the decree for maintenance, the plaintiffs also prayed for creating a charge for maintenance over the land.

3. Pending the suit, the defendant No. 1 died on 27.2.1981. The plaintiffs, therefore, filed application Exhibit 64/D for amendment of the plaint inter alia seeking amendment to para No. 8 to the effect that on account of death of the defendant No. 1, the plaintiff No. 1 has become entitled to hold and enjoy the suit land in lieu of amount of mehr and arrears of maintenance and further that the plaintiff No. 1 be declared to be entitled to hold and possess the suit land as the exclusive owner.

4. The learned trial Judge rejected the application solely on the ground that if the amendment is allowed, it would totally change the nature of the suit, inasmuch as the suit as originally framed was for maintenance and it is being amended as a suit for declaration of title. Therefore, the causes of action are different. Hence, the application was rejected.

5. Smt. Kulkarni, learned Counsel for the petitioner-plaintiffs urged that proposed amendment was necessary because of the death of the original defendant No. 1 and it cannot be said that there would be a total change of nature of the suit claim. According to the learned Counsel, the learned trial Judge has fallen into an error in not taking into account the subsequent events for purpose of grant of amendment to do justice to the parties. In this context, reliance has been placed on a decision in case of *Velammal and Others Vs. Chokkiah Gounder and Others*, . In the case relied on by the learned Counsel on somewhat identical facts, it has been held that where on the husband's death pending the suit against him by the wife for future maintenance the wife becomes entitled to a share in his property. She can, in the altered circumstances, be allowed to amend the plaint to seek partition and separate possession of her share.

6. The Court is entitled to take note of subsequent events of the death of the original defendant No. 1. If regard be had to the main prayer in the suit, as originally framed, the plaintiffs have specifically prayed for a decree of creating a charge on the land possessed by the original defendant No. 1 and on account of his death, admittedly, the plaintiffs have right in said property, as successors of the title of the original defendant No. 1. In that view of the matter it cannot be said that the plaintiffs' suit is wholly displaced by the amendment which is sought by the plaintiffs, nor can it be said that, the amendment of the plaint would convert the suit into another different and inconsistent character. The defendant No. 2, who is intending purchaser from the original defendant No. 1, has already been joined as party to the suit. According to the plaintiffs, the original defendant No. 1 could not have agreed to sell the land to the defendant No. 2 in disregard to the claim for maintenance. In this context it is necessary to point out that during pendency of the dispute as to possession between the

plaintiff No. 1 and the defendant No. 2 the land was attached. That necessarily shows that the defendant No. 2 has notice of the claim of the plaintiffs as against the land which he has intended to be purchased from the original defendant No. 1. Moreover, the fact on that death of the original defendant No. 1, the plaintiffs are entitled to the property of deceased-defendant No. 1 cannot be disputed. Therefore, the relief now claimed by the plaintiffs in addition to the original is based upon subsequent events of a higher right.

7. It is true that ordinarily, the decree in a suit should accord with the rights of the parties as they stand at the date of the institution of the suit. But where it is shown that the original relief claimed has by reason of the subsequent change of circumstances become inappropriate or that it is necessary to have a decision of the Court on the altered circumstances in order to shorten the litigation or to do complete justice between the parties, it is incumbent upon the Court to take note of the altered circumstances which happened subsequent to the filing of the suit and mould its decree according to the circumstances at the time of the decree is made.

8. Therefore, keeping in view above well established principle and to avoid multiplicity of litigation, the learned trial Judge ought to have exercised his discretion in grant of amendment.

9. In the result, the order of the trial Judge refusing the amendment is quashed and set aside and the revision petition is allowed. The amendment prayed for is granted. The defendant No. 2 will be entitled to file his additional written statement.

Rule is accordingly made absolute. There shall, however, be no order as to costs.