Radha Saran Dubey and another Vs Ram Niwas and others

Court: Allahabad High Court

Date of Decision: April 28, 2000

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 17

Citation: (2000) 3 AWC 2282 : (2000) AWC 2282

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: Janardan Sahai, for the Appellant; V.K. Birla, for the Respondent

Judgement

D. K. Seth, J.
The order dated 10th July. 1998, passed by the Additional Civil Judge (Senior Division) Second Court. Mathura, in

Original Suit No. 71 of 1992 has been challenged. By the said order, the revisionists'' application for amendment, which is Annexure-II to the said

application has since been rejected. Mr. Rakesh Bahadur, learned counsel for the revisionist contends that in view of the amendment that was

allowed in the plaint as Is apparent from paragraph 1 of the amended plaint, Thakur Govind Dev Ji Maharaj has been described as the owner of

the property to whom the plaintiffs are paying rent. Therefore, in order to prove their title, it has become necessary to implead Sebalt of Thakur

Govind Dev Jl Maharaj, and. therefore, by means of amendment, it was sought to implead one Anjan Kumar Dev Goswami as party defendant to

the proceeding with the added amendments to the extent that the said Anjan Kumar Dev Goswaml who is Sebait of Thakur Govind Dev Ji

Maharaj had threatened the plaintiff of dispossession on 31st March. 1998 and that the cause of action had arose on 31st March. 1998. when the

plaintiff was threatened of dispossession. Therefore, this amendment should have been allowed In order to determine the real question in issue. The

same neither changes the nature of the suit nor Introduces a new cause of action.

2. Mr. V. K. Birla. learned counsel for the opposite parties on the other hand contends that there has been inordinate delay in preferring the

amendment. Inasmuch as paragraph 1 of the plaint was amended in 1993. Whereas the application for amendment was made in 1998. He

secondly contends that the plaintiffs are not allowing the suit to proceed and by virtue of such amendment, they are dragging on the suit. He further

contends that the plaintiffs had filed amendment earlier, they could have incorporated the present amendment on earlier occasion as well.

3. 1 have heard both the learned counsel at length.

4. So far as the question of delay is concerned as contended by Mr. V. K. Birla, does not seem to be sound proposition. Inasmuch as in the

amendment application the cause of action was said to have arisen on 31st March, 1998. Therefore, the amendment could not have been asked

for before 31st March, 1998. It is immaterial whether another amendment was allowed in 1993. There is no provision that once amendment is

allowed, the subsequent amendment application would not be maintainable.

5. So far as the conduct is concerned, that is also immaterial. Whether it will delay the process or not has nothing to do with the question of

amendment. The principle that has to be considered while dealing with the application for amendment is not the question of conduct of the parties.

On the other hand, it has to be seen whether the amendment changes the nature and character of the suit property and brings about the

multtfarlousness or it Introduces a new cause of action or there is any misjoinder of cause of action or not.

6. In Bhuramal v. Samla Dallurband, 82 Col WN 1 and Monika v. Blsunbikash AIR 1986 Col 113 , it was held that by way of amendment, a new

case or new cause of action cannot be allowed to be set up. Nor any party can be allowed to convert his claim into one of different character. In

Kumaraswami Gounder and Others Vs. D.R. Nanjappa Gounder (dead) and Others, , it was held that where the amendment sought for sets up a

totally different cause of action which ex facie cannot stand on a line with the original pleading, amendment is to be refused. A pleading can only be

amended to substantiate, elucidate, expand the pre-existing facts contained in the original pleading.

7. Under Order VI. Rule 17 of the CPC such amendments are permissible ""as may be necessary for the purpose of determining the real question

in controversy between the parties."" Therefore. In order to allow an amendment, the Court has to consider whether the amendment is necessary

for determining the real question at issue. It cannot bring in new case, that too between the plaintiff and a stranger to the suit even though the

stranger may be sought to be added as a party.

8. In the present case, the suit was filed in 1992, on the basis of the cause of action alleged to have arisen on 27th January. 1992. There cannot be

a suit in respect of a cause of action which alleges to have arisen after the suit is filed. Had it been a case that the cause of action is a continuation

of a cause of action in the suit and was reason of any action on the part of the parties in the suit, in such event the question would have been

different. It might be treated to be a subsequent development and not an independent cause of action. Whereas in the present case, the cause of

action which alleged to have arisen on 31st March. 1998. related to a stranger to the suit who was not a party to the suit at all. Therefore, the same

is altogether a new cause of action, which is not related to the cause of action already involved in the suit itself and as such, the cause of action that

arise after the suit is Instituted which is not a subsequent development and will be unrelated in respect of the cause of action that was involved in

the suit and not being concerned with the parties to the suit, the same cannot be introduced by way of amendment. in case this amendment is

allowed, in that event it will be introducing a new cause of action in respect of different persons.

9. It is a settled principle of law that a suit is to be tried on original cause of action. A suit is ordinarily tried on the cause of action as it existed on

the date of institution. The word ''may'' is the first part of Order VI. Rule 17 of the Code Js in general terms, but. the words ""all such amendments

shall be made as may be necessary for the purpose of determining the real question in controversy"" In second part carries the mandate.

10. But there are some exceptions to the above rules. In such eases amendment may be permissible where the Court finds that (1) by reason of

subsequent change of circumstances the original relief claimed has become inappropriate, (2) the subsequent changed circumstances shortens

litigation, or (3) notice to subsequent change is required to be taken of. to do complete justice between the parties.

11. The above view may find support in Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, ; Shikharchand Jain Vs.

Digamber Jain Praband Karini Sabha and Others, ; Allahabad Theatres (Pvt.) Ltd. and Others Vs. Smt. Kusum Kumari, ; Bibhas Chandra Bose

Vs. Sm. Dolly Bose nee Dutta, .

12. The prayer for impleadment of a stranger by way of amendment does not leave the impleadment as an amendment. It is in fact addition of a

party in order to find out as to whether the presence of such party is necessary for the disposal of the suit. Parties are added when they are either

necessary parties or proper parties. The suit as framed even after the amendment that was allowed does not leave any scope to include Anjan

Kumar Dev Goswami either as a necessary party or a proper party. There was no question of Anjan Kumar Dev Goswami to be impleaded as a

party even if he is a Sebait of Thakur Govind Dev Ji Maharaj and the property belongs to the deity so long the plaint does not disclose any dispute

with regard to ownership or title of Thakur Govlnd Dev Ji MaharaJ. or the plaintiffs. Even then it would suffer from multlfarlousness and misjoinder

of cause of action. Thus. by no stretch of imagination, the said Anjan Kumar Dev Goswami. could be added as a parry in the plaint.

13. Then again Anjan Kumar Dev Goswami has not been sought to be added as a party as Sebait of Thakur Govind Dev Ji Maharaj nor Govlnd

Dev Jl MaharaJ has also been sought to be added as a parry. Therefore, the contention of Mr. Rakesh Bahadur that the presence of the owner is

necessary does not stand to reason. Inasmuch as in the plaint. Thakur Govind Dev Ji Maharaj has been said to be the owner of the property but

Thakur Govlnd Dev Ji MaharaJ has not been sought to be added as a party. Whereas Anjan Kumar Dev Goswami has been sought to be added

as a party who has not been described as Sebait in the amendment sought for. Though in the pleading, a cause of action was sought to be

introduced contending that Anjan Kumar Dev Goswami is a Sebait of Thakur Govlnd Dev Jl MaharaJ. but such pleading cannot suffice unless the

description of the parties is proper. In such circumstances, addition of Anjan Kumar Dev Goswami would not help Mr. Rakesh Bahadur in the

contention that the owner is being sought to be added.

14. A person may have dual capacity or entity--one as a person and another as an official capacity holding the office of Sebait representing the

interest of the deify. Here in the amendment that has been sought for. there is no whisper seeking to say that Anjan Kumar Dev Goswami was

representing the interest of the deity. Even in the amendment sought for. It is not pleaded that in the capacity of Sebait, the said Anjan Kumar

Goswami, had threatened to dispossess the plaintiffs.

15. Mr. Rakesh Bahdur had relied on the decision fn the case of Rajendra Kumar Tewarl and others v. Civil Judge and others. 1987 ACJ 110. In

order to sustain his contention that the delay should not be a ground for refusing amendment. The said decision cannot help us in the present

situation since even if the delay is not taken into consideration still then on merit, the amendment could not be allowed. Therefore. Mr. Rakesh

Bahadur cannot draw any inspiration relying on the said decision so far as the facts and circumstances of this case are concerned.

16. He then relies on the decision in the case of Kamal Ragmi Sharma and others v. Nepal Bank Limited 1987 ACJ 83. That decision will not help

us since in the said case written statement was filed by both defendant Nos. 1 and 3 and defendant No. 3 had asked for amendment of the written

statement, which was neither against the will nor against the wish of the defendant No. 2. Therefore, this Court had taken the view that such an

amendment was rightly allowed. This case cannot come to aid of in the facts and circumstances of the case. Inasmuch as in the present case it is

altogether a new cause of action that is being sought to be introduced changing the whole complexion of the suit introducing multifariousness and

misjoinder of cause of action and that too a cause of action that had purported to have arisen after filing of the suit, which normally cannot be

incorporated in the suit. A suit is filed only in respect of cause of action that already had arisen and that too. between the parties but not between

the plaintiff and a stranger to the suit. Subsequent development related to the same cause of action arising between the parties in respect of the

cause of action involved in the suit may be brought about by way of amendment. Therefore, this decision does not help us.

17. For all these reasons, this revtslonal application fails and is accordingly, dismissed. Interim order, if any. stands discharged. The learned trial

court shall dispose of the suit as early as possible, preferably within one year from, the date a certified copy of this order is produced before it. The

revisionists shall not seek any adjournment. No cost.

18. Let a certified copy of this order be issued to the learned counsel on payment of usual charges at the earliest.