

(1988) 01 KL CK 0030
High Court Of Kerala
Case No: C.R.P. No. 2017 of 1986-G

Parvathy

APPELLANT

Vs

IPE

RESPONDENT

Date of Decision: Jan. 7, 1988

Acts Referred:

- Specific Relief Act, 1963 - Section 16

Hon'ble Judges: K. Balakrishnan Nair, J

Bench: Single Bench

Advocate: V.V. Sidharthan, for the Appellant; M.V. Bose, for the Respondent

Final Decision: Dismissed

Judgement

Balakrishnan, J.

Defendants in a suit for specific performance of contract are the revision Petitioners. Plaintiff filed a suit for specific performance on contract based on an agreement executed by the Defendants on 17.5.1983. As per the agreement Defendants-revision Petitioners had to execute a sale deed in respect of suit property on or before 20.3.1984. Total consideration for transaction (sic) RS. 24,000/- and according to the Plaintiff he had paid Rs. 20,000/- as advance. In the plaint it, has been alleged that notice was issued to the Defendants on 13.3.1984 informing that the Plaintiff would come to the office of the sub Registrar on 20.3.1984 with the balance sale consideration and the expenses, for executing the sale deed and the Defendants have to report at the Sub Registrar's Office on that day. Plaintiff accordingly went to the Sub Registrar's Office on 20.3.1984 but the Defendants did not turn up to execute the sale deed. It has been stated that at the time of filing suit, the Plaintiff deposited in Court the balance amount of consideration due. However, in the plaint there was no specific plea to the effect that he had always been ready and willing to perform the essential terms of the contract which has to be performed by him. Defendants filed written statement and raised the contention that the Plaintiff is not entitled to the relief of specific performance of the contract in

view of Section 16(c) of the Specific Relief Act. Subsequent to the filing of the written statement the Plaintiff filed I.A.I 804 of 1986 for the amendment of the plaint to incorporate the necessary pleadings as envisaged u/s 16(c) of the Specific Relief Act. Interlocutory application was opposed by the Defendants and the court below allowed the amendment. This order is being challenged in this revision.

2. Learned Counsel for the revision Petitioner contended that in the original plaint the Plaintiff has not raised any plea regarding his readiness and willingness to perform the essential terms of the contract. Therefore, the Plaintiff was not entitled to seek specific performance of the contract and because of the absence of this plea, a right has been accrued to the Defendants and the same can not be taken away by amending the plaint. Reliance was placed on the decision *Palthur Honnur Saheb v. Bopanna Annapurnamma* reported in AIR. 1986 Kar 109. There the court refused to amend the plaint. The facts disclosed in that case show an entirely different picture. There the suit was filed for specific performance and the suit was originally decreed and at the appellate stage the Defendants raised the contention that the suit was incompetent as the allegations in the plaint had fell short of the requirements u/s 16(c) of the Specific Relief Act. At the appellate court the Plaintiff moved an application for amendment of the plaint. The District Judge set aside the decree and judgment and remanded the suit with a further direction to the trial court to dispose of the amendment application. The trial Court later allowed the amendment application. In an appeal filed against that decree the High Court of Karnataka stated that amendment should not have been allowed.

3. Here the facts are entirely different. The Plaintiff moved for amendment application immediately after the Defendants pointed out the defect in the pleadings. Moreover the averments given in the plaint taken in its entirety would show that the Plaintiff had alleged the facts necessary to show that he has been ready and willing to perform the essential terms of the contract. However, the exact words occurring in Section 16(c) of the Act were not incorporated. Under such circumstances the court below was justified in allowing the amendment. That apart, the contract was to be performed on 20.3.1984. The amendment application was moved on 22.7.1986. That is within the period of limitation. In the decision [Vineet Kumar Vs. Mangal Sain Wadhwa](#), it has been held by the Supreme Court that normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation.

4. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties and to prevent

deviations from the course which litigation on particular causes of action must take. (See [Ganesh Trading Co. Vs. Moji Ram,](#)).

If the above principles are applied I see no reason to interfere with the impugned order. The Court below has rightly exercised jurisdiction and allowed the amendment. The Civil Revision petition fails and the same is dismissed.