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**(1957) 09 KL CK 0042**

**High Court Of Kerala**

**Case No:** C.R.P. No. 1214 of 1956 (M)

Venkatasubramania Iyer

APPELLANT

Vs

Venkatarama Iyer

RESPONDENT

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**Date of Decision:** Sept. 16, 1957

**Acts Referred:**

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

**Citation:** (1957) KLJ 948

**Hon'ble Judges:** C.A. Vaidialingam, J

**Bench:** Single Bench

**Advocate:** A.S. Krishna Iyer, for the Appellant; T.R. Ramachandran and C.K. Viswanatha Iyer, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

C.A. Vaidialingam, J.

This is a revision by the plaintiff in a small cause suit against the order of the learned Subordinate Judge, Palghat dismissing his application for leave to amend his plaint. The plaintiff's suit originally was for recovery of a sum of Rs. 720/- from the defendant in his capacity as President of a Village Community Project and out of the funds of the Society in his hands as President on the ground that the Committee of the Vilayannur Village Community Project through its President the defendant entrusted certain items of work to the plaintiff. It was further alleged that the Government has put the defendant as President of the Community Project with the necessary funds and that the President has also made some collections from the public and that both these monies are with the defendant as President. The relief also was to direct the defendant as President of the Vilayannur Village Community Project to pay the amount due to the defendant from and out of the funds in his hands.

2. The defendant contested the claim on several grounds namely, that the plaintiff had committed breach of agreement and that he has not also completed the work in time. Another substantial contention raised by the defendant was that the suit is not maintainable as the Society of which he is the President is an unregistered Society.

3. The suit itself is one of 1954 and 2 years later, when the question of the maintainability of the suit was being argued as a preliminary point, the plaintiff filed an application I.A. 1236/56 for amendment of the plaint claiming an alternative relief personally against the defendant. This application was opposed by the defendant and ultimately rejected by the learned Judge.

4. In revision before me, Mr. A.S. Krishna Iyer, learned counsel for the petitioner-plaintiff has contended that the order of the lower court is wrong and that under Order 6 Rule 17 C.P.C. the court has very large powers of amending the proceedings and that no injustice will be caused to the defendant and he has also relied upon very strongly the decision of a single Judge of the Mysore High Court reported in *Bheemasenachar v. Basiah* (A.I.R. 1956 Mys p. 44). Before considering the authority cited by the learned counsel, it is necessary to consider the scope of the amendment asked for. As stated earlier, the plaint as it originally stood, was against the defendant as President of the Village Community Project and claiming relief against him only in that capacity in respect of the amounts given to him by the Government and also collected from the public. To the frame of the suit an objection had been taken. The plaintiff did not care to take any steps in respect of the objections taken by the defendant. The amendment asked for now is for a relief against the defendant in his personal capacity. In the proposed amendment it is stated that the work was undertaken by him in view of specific request made by the defendant in his own responsibility and that the plaintiff practically looked up to the defendant for payment. It will be seen that the amendment asked for is completely destructive of the original case set up in the plaint and, in my view, it totally alters the character of the suit and will cause very serious prejudice to the contentions of the defendant. The principle laid down in the decision cited by the learned counsel in *Bheemasenachar v. Basiah* (A.I.R. 1956 Mys p. 44) itself is that an amendment of the pleading should be refused when the amendment has the effect of introducing a totally different and inconsistent new case. I respectfully agree with this reasoning of the learned Judge of the Mysore High Court. That decision certainly will not assist the plaintiff in this C.R.P., because the learned Judge, after laying down the principles, comes to the conclusion that in the case before him no such inconsistency is present. This C.R.P. is accordingly dismissed with costs.