

Venkatasubramania Iyer Vs Venkatarama Iyer

Court: High Court Of Kerala

Date of Decision: Sept. 16, 1957

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” 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

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.