

(1982) 08 MP CK 0005

Madhya Pradesh High Court (Gwalior Bench)**Case No:** Civil Revision No. 500 of 1980

Sayed Ali and another

APPELLANT

Vs

Gyarsilal Bansilal

RESPONDENT

Date of Decision: Aug. 3, 1982**Acts Referred:**

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

Citation: (1983) JLJ 746 : (1983) MPLJ 389**Hon'ble Judges:** R.C. Shrivastava, J**Bench:** Single Bench**Advocate:** R.C. Lahoti, for the Appellant; R.D. Jain, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.C. Shrivastava, J.

This is defendants' petition for revision of an order dated 10-4-1980 whereby, in civil suit No. 182-A of 1976, Civil Judge Class II, Guna, allowed an application dated 9-4-1980 of the respondent-plaintiff for amendment of the plaint.

The suit was instituted on 19-4-1976. The plaintiff's case was that, after having taken, on 27-7-1974, a Theka from Gram Panchayat, Umri for collection of bones for the period till 30-6-1975 on payment of Rs. 1525 to the Gram Panchayat, he collected bones in the Theka-area till that date. On 10-1-1976, by a truck, he took those bones to the bone-mill of the defendant No.2 (respondent No.2) situated at Bajargarh Road, Guna, for the purpose of selling away the same to him and unloaded the truck there in his (defendant No. 2) presence. Thereafter, on the same date, when he was getting the bones, weighed there for the purpose of delivering the same to the defendant No. 2, some men of the defendant No. 1 (respondent No. 1) arrived and got the work discontinued on the contention that the plaintiff did not have title to

the bones. The plaintiff sent notices dated 21-2-1976 to the defendants but they did not give any reply thereto. Therefore, he claimed against the defendant No. 1 only a declaration that the bones belonged to him and also a perpetual injunction restraining him from interfering with his possession thereon either by himself or through anybody else.

The defendant No. 1 admitted to have received the alleged notice but denied specifically the allegation that his men got the weighing of the bones discontinued. He pleaded ignorance with regard to the other plaintiff-allegations. According to the defendant No. 2, the truck-load of bones was brought to his mill and unloaded there not by the plaintiff but by one Abdul Mazid and the weighing was discontinued not by any man of the defendant No. 1 but by Abdul Mazid himself at the instance of a Head Constable of Guna police-station. He pleaded that the bones were still lying at the mill and he was prepared to pay price thereof to the person by whom they were brought. On other points, he pleaded ignorance.

Issues were framed on 12-9-1979 and the suit was posted to 3-10-1979 for evidence. On 3-10-1979, it was adjourned to 7-4-1980 for the same purpose. On 7-4-1980, the counsel for both the defendants submitted in writing separately that the defendants had no objection to the bones being taken away by the plaintiff from the mill. The suit was, on that date, adjourned to 9-4-1980, on which date the plaintiff submitted an application under Order 6 Rule 17 for amendment of the plaint. Thereby, he wanted to plead that, in view of the said submissions dated 7-4-1980 made on behalf of the defendants in Court, when he went on 7-4-1980 and 8-4-1980 to the spot where the bones had been unloaded from the truck, he did not find the bones there, which fact revealed that they had been removed from there by the defendants and he was, therefore, entitled to claim Rs. 4,000) as price thereof from the defendants jointly and severally. Amendments ancillary to these allegations were also sought in the "cause of action", "valuation" and "relief clauses. The relief of perpetual injunction was sought to be substituted by the claim for recovery of Rs. 4,000 as price of the bones from both the defendants. That amendment-application was allowed by the trial Court vide order dated 10-4-1980, which is the subject-matter of this revision.

The learned counsel for the petitioners has argued that the said amendment introduces a new case or a new cause of action and, therefore, it could not be allowed. In support of his contention, he has referred to decisions in the following cases. *ClnmnUal v. Deoram* and another AIR 1948 Ngp 119, [A.K. Gupta and Sons Vs. Damodar Valley Corporation](#), [Chaubey Sushil Chandra Vs. Raj Bahadur](#), *Narsayya v. State of M. P.* 1977 (1) M PW 374 , According to the learned counsel for the respondent, the amendment was necessitated due to change of circumstances during pendency of the suit and, therefore, it was rightly allowed. He has referred to decisions in the following cases. [L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.](#), [Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon](#), ,

[Lakhmichand Kasliwal Vs. Gopaldas Nikhara,](#) The first case referred to by the learned counsel for the petitioners related to amendment of written statement. Therein, the observations were as follows :

Just as a plaint cannot be allowed to be amended so as to introduce a new and inconsistent cause of action which would change the nature of the suit, so also the defence cannot be allowed to be altered so as to introduce a different set of circumstances inconsistent with the circumstances pleaded to begin with." In the next case referred to by him, the Supreme Court observed as follows.-"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred.....

But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation.

In the third case referred to by him, a Division Bench of Allahabad High Court held that, in the absence of special circumstances, an amendment seeking to change the nature of the suit should not be allowed where a valuable right had accrued to the other party. In the last case referred to by him, it was held by a Division Bench of this Court that "The test for deciding whether the proposed amendment attempts to introduce a new case is whether they contain a "new set of ideas."

I shall now refer to the decisions cited by the learned counsel for the respondent. According to the first decision referred to by him, the Court has discretion to allow even a time-barred claim to be introduced by amendment of the plaint in the circumstances of a particular case although, as a rule, the Court would decline to allow such an amendment. In the next case referred to by him, the observations were as follows-

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side." In the last mentioned case referred to by him, a single Bench of this Court observed as follows:

Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has by reason of subsequent change of circumstances, become

inappropriate or that it is necessary to have the decision of the Courts on the altered circumstances in order to shorten litigation or do complete justice between the parties, it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time of the decree is made.

The facts of the cases cited before me were entirely different from the facts of the present case. Only the last case referred to by the learned counsel for the respondent related to amendment necessitated due to change of circumstances during pendency of the litigation. The power to allow an amendment under Order 6, Rule 17 is very wide and can at any stage be appropriately exercised in the interest of justice and to prevent multiplicity of suits, the law of limitation notwithstanding. But, the exercise of such far reaching discretionary powers is governed by judicial considerations, and, wider the discretion, greater ought to be the care and circumspection on the part of the Court. The power to allow amendment of pleadings is granted to the Court in the larger interests of doing full justice to the parties. The general rule, therefore, is that all amendments are to be allowed which do not purport to set up a new case and which would not work injustice to the other side and which will be necessary for the purpose of determining the real questions in controversy between the parties. The circumstances under which the prayer for amendment is to be allowed or disallowed cannot be exhaustively enumerated. It depends upon the facts and circumstances of each individual case. But, the principle is to do substantial justice and not to punish the party on technical grounds. The whole matter is entirely at the discretion of the Court. Still, as a general rule, the Court does not, in exercise of such discretion, allow an amendment converting a suit of one character into that of another character in the absence of special circumstances. If there are special circumstances, the Court has discretion to allow even such an amendment in order to advance the cause of justice.

As it has not been disputed before me that the amendment in question introduces a new cause of action, I do not express my opinion on that point and content myself by observing that, as pointed out by their Lordships of the Supreme Court in the case of *A. K. Gupta and Sons Ltd, v. Damodar Valley Corporation* (supra), the expression "cause of action" for the present purpose only means a new claim made on a new basis constituted by new facts.

The question remains as to whether, in the circumstances of the case, the amendment could be allowed. It was occasioned due to events happening during pendency of the suit. Due to subsequent developments during pendency of the suit, the reliefs sought in the plaint became redundant and could not be granted. That is why the amendment was applied for and appropriate relief sought to be substituted for the relief of perpetual injunction in light of the changed circumstances. The relief claimed by the amendment was not available when the suit was instituted and, in view of the allegations, was also not barred by time on the date of the amendment.

application. It is well settled that, where, by virtue of circumstances arising subsequent to the institution of the suit, the original relief claimed in the suit becomes inappropriate or redundant and the plaintiff becomes entitled to a larger or other relief than the one claimed, amendment may be allowed so as to add or substitute such other relief and that all reliefs ancillary to the main relief may also be allowed to be added by way of amendment. The Court takes notice of such subsequent events in order to shorten litigation, to preserve the rights of the parties and to subserve the ends of justice. As observed at page 1309 under the head "Amendment necessitated by subsequent events" in 9th Edition of A. I. R. Commentaries on the Code of Civil Procedure,

Thus where subsequent to the institution of the suit events happen which give the plaintiff a new cause of action for the relief claimed or the right to a new or additional relief he will as a general rule be allowed to amend the plaint by moulding it in an appropriate manner.

Two observations in the same context are to be found at page 1288 of the same edition. They are as follows :

Where in a suit for injunction restraining the defendant disbursing compensation amount it was found that the amount was already disbursed before the grant of temporary injunction the plaintiff was allowed to amend the plaint so as to make it one for the recovery of the amount.

A suit for injunction was dismissed for default. Before the plaintiff could get it restored, the defendant trespassed on the property. After the restoration of the suit the plaintiff applied for amendment of the plaint by seeking the relief of possession. It was held that the frame of the suit was not changed by the amendment and that the application should be allowed.

The observations made by this Court in the same connection in the case of *Lakhmichand Kasliwal v. Gopaldas Nikhara* (supra) have already been reproduced in paragraph No. 6 above.

Thus, in the circumstances already detailed above, the contention of the learned counsel for the petitioner that the amendment could not be allowed for the reason that it introduced a new cause of action has no force.

The only other contention of the learned counsel for the petitioner is that the amendment could not be allowed because, even after the amendment, the amended claim had no chance of success. In support of his contention that, in the absence of chance of success, an amendment should not be allowed, he has placed reliance on the following sentence appearing at the end of 1977 (I) MPWN 374 (supra).

Even if the amendment were to be allowed the amended suit has no chance of success.

In that case, an order rejecting an amendment application was upheld on certain other grounds also and absence of chance of success even after the amendment was stated to be an additional reason therefor and the circumstances under which the said observation was made were entirely different from the circumstances of the present case. According to the learned counsel, the allegation in the amendment that the defendants appear to have removed the bones would not be sufficient to decree the amended claim because it does not specifically say that the bones were removed by them. It is well settled that pleadings in this country have not to be construed so strictly or with such formalistic rigour or scrutinised with such meticulous care as to non-suit the plaintiff on the ground that the claim is not properly described or as to result in genuine claim being defeated on trivial ground. A perusal of the amendment shows that the allegation is to the effect that the facts and circumstances reveal that the bones were taken away by the defendants from the spot at which they had been unloaded from the truck and that is coupled with the prayer for substitution of the claim for price of the bones for the relief of perpetual injunction. Thus, it becomes clear that the plaintiff means to allege that the bones were taken away from there by the defendants. That is sufficient to make out a ground for the amended claim. It follows that the contention of the learned counsel that there is no chance of success of the amended claim is also without any force.

It follows that there is no cause for interference with the impugned order. The revision-petition is, therefore, dismissed with costs. The petitioners shall pay the respondent's costs. Counsel's fee shall be upto Rs. 30 only, if pre-certified.