**(1951) 04 CAL CK 0021**

**Calcutta High Court**

**Case No:** Application in Original Suit No. 646 of 1951

| | |
|---|---|
| Krishna Kishore Ghosh | APPELLANT |
| Vs | |
| Kishori Debi Keshani | RESPONDENT |

**Date of Decision:** April 25, 1951

**Acts Referred:**

- Civil Procedure Code, 1882 - Section 53
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 1, Order 6 Rule 17, Order 7 Rule 11, 153, 42

**Citation:** (1952) 2 ILR (Cal) 182

**Hon'ble Judges:** Sinha, J

**Bench:** Single Bench

**Advocate:** Ajoy K. Basu, for the Appellant;A.K. Sen and S. Roy, for the Respondent

**Final Decision:** Allowed

**Judgement**

Sinha, J.

This is an application for amendment of the plaint. The suit was filed in January last, and no written statement has yet been filed. The facts are briefly as follows. The Plaintiffs are the owners and occupiers of a dwelling house, being premises Nos. 27 and 29, Baranashi Ghose Street. They were originally the owners of a contiguous piece of land, being premises No. 22B, Rajendra Mullick Street, which they sold out in 1937. The Defendant is the present owner thereof. On that land, the Defendant has already constructed a four-storied building, and the Plaintiffs allege that she is proceeding to construct a fifth storey. The Corporation has sanctioned only a two-storied building, and according to the Plaintiffs, the foundation thereof is also that of a two-storied building. Premises Nos. 27 and 29, Baranashi Ghose Street, is a house constructed about half a century ago. According to the Plaintiffs, the result of all this has been that the western wall of the Plaintiffs house is tilting westward, large cracks have appeared in the walls and in the roofs and the Defendant''s house is also sinking and has caused disturbance in the neighboring sub-soil. It is further

alleged that there are ancient lights in the Plaintiffs'' premises to the west, and the Defendant has built a wall sixteen feet high, at a distance of two feet only, from these ancient lights and is about to continue building the wall still higher. I need say nothing regarding the merits of the case here, since an application is pending for an injunction restraining the Defendant from making any further construction, where these matters will be considered. In that application, the Plaintiffs applied for, and obtained, an interim injunction restraining the Defendant from making further construction, not expressly authorised and sanctioned by the Corporation of Calcutta. At the hearing of the application, however, it transpired that the Plaintiffs had pleaded most of the relevant facts in the body of the plaint, but had omitted to incorporate a prayer for a perpetual injunction restraining the Defendant from making any further constructions, apart from the wall, in respect of which only, an injunction had been prayed for. As the plaint stood, the Plaintiffs could only ask for damages and an injunction regarding the wall. The result was that the interim injunction regarding further construction of the building was clearly bad, and I had to vacate it. The Plaintiffs, however, asked for an opportunity to amend the plaint by incorporating a prayer for a perpetual injunction, and I adjourned the main application for amendment of the plaint, which they have now done. The amendments asked for are set out in red ink, in a draft, a copy whereof has been furnished to the Defendant. The amendments asked for in Ex. "A" to the petition have been slightly varied. The only substantial alteration in the plaint is the addition of a prayer for a perpetual injunction restraining the Defendant from further building, without sanction of the Corporation. It is argued that this is changing the nature of the whole suit and introducing a new and inconsistent case. Reliance is placed on Section 54 of the Specific Belief Act, which lays down that no injunction should be granted where damages are an adequate remedy. It is argued that the Plaintiffs themselves admitted in the original plaint that the injury was capable of being assessed in damages, thus disentitling them to an order for injunction. This, to my mind, is not a correct reading of the plaint. The Plaintiffs state that as a result of the unlawful building by the Defendant, their house has been damaged. The damages suffered so far, have. been. assessed, and it is said that the damages are continuing from day to day. It has nowhere been stated that the further constructions are also assessable in damages. It would be a strange kind of law which compels a man to look on helplessly while a neighbour goes on making unauthorised constructions, simply because, if his hearth and home cracks up and falls to the ground, a new one could be made again, by spending money. In such a case, pecuniary compensation is not an adequate remedy and I have no doubt in my mind that if the facts are proved, an injunction order would be quite appropriate. This, however, is in reality, an objection relating to the merits of the case. In this application I am not concerned with the point. as to whether the Plaintiffs will succeed in obtaining an order for injunction. What I am concerned with, is, as to whether I should allow them an opportunity to ask for it. In my opinion the omission to ask for a perpetual injunction in this case, is a pure accidental error, or as the

Plaintiffs put it, "by mistake or oversight", and the amendment should be granted. I shall now discuss the law on. The subject. Amendments of pleadings are governed by the revisions of Order VI, Rule 17 of the CPC which runs as follows:

Rule 17 : The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be-made as may be necessary for the purpose of determining the real questions in controversy between the parties.

2. This corresponds to Section 53 of the old Code. The provisions of Section 53, were more restricted, both as to the point of time when the application could be made, as well as to the extent of the amendment. Under the amended provision, a wide discretion is given to the court in the matter of amendment of pleadings. It is true that such discretion has to be exercised on judicial principles and not in an arbitrary or fanciful manner so as to cause injustice to the other side, but it would be correct to say that, subject to such a limitation, the courts are gradually tending to become more and more liberal in granting amendments, especially when the. application is made at an early stage, and the other side can be adequately compensated by costs. Order VI, Rule 17 of our Code is practically the same as the corresponding English rule, Order XXI, Rule 1, and it is instructive to refer to the leading cases on the subject.

In Tildesley v. Harper (1978) 10 Ch. D. 393, Bramwell L.J. said as follows:

I have had much to do in Chambers with applications for leave to amend and I may perhaps be allowed to say that this humble branch of learning is very familiar to me. My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise.

In the same case, Thesiger L.J. said as follows:

I am also of opinion that it is important that the rules of the court as to pleading; should be enforced, but this may be done at too great a price. The object of these-rules is to obtain a correct issue between the parties and when an error has been made it is not intended that the party making the mistake should be mulcted in the loss of the trial.

In Cropper v. Smith (1884) 26 Ch. D. 700, 710, Bowen L.J. said as follows:

Now, I think it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in. the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for

the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace....It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right.

Also Clarapede and Co. v. Commercial Union Association (1884) 32 W.R. 263, and Weldon v. Neale (1887)19 Q.B.D. 394.

3. It has been the constant endeavour of the courts to allow parties every facility to put forward their real disputes. The Judicial Committee observed in Hunooman Persaud v. Mussamat Babooee (1856) 6 M.I.A. 393, 410, as follows:

It is of the utmost importance to the right of administration of justice in these courts that it should be constantly borne in mind by them that by their very constitution they are to decide according to equity and good conscience that the substance and merits of the case are to be kept constantly in view...that if by inadvertence or other cause, the recorded issues do not enable the court to try the whole case on the merits, an opportunity should be afforded by amendment, and if need be, by adjournment, for the decision of the real points in dispute.

4. It is argued in this case, that the amendment should not be allowed because it introduces a new case altogether and changes the nature of the cause of action. In the old Section 53, it was expressly provided that an amendment should not be allowed to as to convert a suit of one character into a suit of another and inconsistent character. But this has been omitted from Order VI Rule 17 of the present Code. The result is, that there are now no rigid rules to fetter the powers of the court in allowing amendments, and the matter is one of discretion entirely. This, however, does not necessarily mean that a party can be allowed to substitute one cause of action for another, or change by amend exit, the subject-matter of the suit. Thus a suit based on contract cannot be allowed to be changed into a suit on tort Kashinath Das. v. Sadasiv Patnaik (1893) ILR 20 Cal. 805, or a suit upon one contract cannot be changed into a suit upon another contract Ma Shwe Mya v. Moung Mo Hnaung (1921) ILR 48 Cal. 832 : L.R. 48 IndAp 214., or a suit for specific performance into a suit for recovery of land Clark v. Wray (1885) 31 Ch. D. 68, or a suit alleging one kind of legal relationship into a suit alleging a different kind M. Doraiswami Iyengar v. G. Radhakrishna Chetty AIR (1938) (Mad.) 669.

5. It is, however, the border line cases that give the most trouble and I confess that it is not always easy to reconcile the decisions on this subject. Alteration of the nature of a suit or the addition of a new cause of action might come dangerously near to an alteration of the subject-matter. It must, however, depend upon the facts of each case. A workable test is to see whether the whole of the Plaintiff''s case is displaced by the proposed amendment. If it does, such an amendment should not

be allowed. If it does not, amendment should be allowed, and the Plaintiff should not be driven to a new suit. Multiplicity of actions is always discouraged by the courts. These principles will become clearer upon a delineation of the more important decided cases. In Mohummud Zahoor Ali Khan v. Mussumat Thakooranee Rutta Koer (1867) 11 M.I.A. 468, a suit was brought against a Ward of Court, upon a bond. The suit proceeded on the footing'' that the Plaintiff was entitled to proceed against the Ward''s estate, and indeed, a number of transferees of the Ward''s properties were impleaded upon the allegation that the transfers were collusive. The Judicial Committee held that the suit as framed was misconceived, but to force the Plaintiff to a new suit would be to defeat his claim on the ground of limitation. Leave was granted to amend plaint by changing it into a pure money claim and by striking out the other parties.

6. In Charan Das v. Amir Khan (1920) ILR 48 Cal. 110, 116 : L.R. 47 IndAp 255, suits were brought for pre-emption, by asking for a declaration of the right but not for possession. The Judicial Commissioner allowed an amendment By permitting a prayer for possession: Lord Buckmaster upholding the order for amendment said:

If this be so, all that happened was that the Plaintiffs, through some clumsy blundering, attempted to assert rights that they undoubtedly possessed under the Statute in a form which the Statute did not permit....That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from the Defendant a legal right which has accrued to him by lapse of time, yet there are cases Mohummud Zahoor Ali Khan v. Mussumat Thakooranee Rutta Koer (supra) where such considerations are outweighed by the special circumstances of the case.

7. In Ma Shwe Mya v. Maung Mo Hnawng (supra), the Plaintiff made a claim for specific performance of an agreement, said to have been entered into by the Defendant in 1912, for transfer of certain lands for boring oil wells. At the trial, the Plaintiff''s case was dismissed on the ground that the alleged agreement was verbal. Upon appeal to the Judicial Commissioner, the Plaintiff was allowed to amend by relying upon a prior agreement of 1903. The Judicial Committee held that such amendment could not be allowed. The Plaintiff, basing his case on one agreement and failing therein, could not be permitted to succeed on a different agreement altogether since, it would be altering the real matter of controversy between the parties.

8. In Ramsaram Mandar v. Mahabir Sahu (1926) ILR 6 Pat. 323 : L.R. 54 IndAp 55, the karta of a Hindu family entered into an agreement with the Plaintiffs for selling a certain house. The Plaintiffs brought a suit against the karta as also against the sons, grandsons, nephews, etc. The suit was in the original court, and the Plaintiffs appealed. During the appeal, the karta died, At the hearing of the appeal before the High Court, counsel for the Appellant gave up the claim for specific performance but contended that the Plaintiff was entitled to recover Rs. 9,000 paid as earnest money.

The High Court set aside the decree of the lower court and decreed Rs. 9,000 with interest. Before the Privy Council, leave to amend was asked, in order to support the decree for the earnest money, Lord Sinha said as follows:

Their Lordships cannot, accede to these arguments. It is not permissible by amendment to change the nature of the suit as framed ; and even if it were, the Defendants affected by such amendment must have an opportunity to rebut such new cause of action, a course which would involve fresh written statements and a fresh trial. Their Lordships are unable to permit such a course at this stage.

9. It should be noted that the Privy Council did not absolutely negative the right of the Plaintiff to apply for such an amendment, but refused to sanction it at such a late stage.

10. In Ardeshir Mama v. Flora Sasoon (1928) ILR Bom. 597 : L.R. 55 IndAp 360, it was held by the Judicial Committee that a suit for specific performance in the alternative can be amended so as to convert it into one for damages only. It was, however, stated that it would appear to be a wise precaution for a Judge before allowing any such amendment in a contested case, to require the plaint to be actually remodeled in a form appropriate in actions seeking compensation for breach of contract and nothing else.

11. In Kanda v. Waghu (1949) L.R. 77 IndAp 15, a suit was brought to set aside alienations by a widow, on the allegation that the properties were ancestral. Before the Judicial Committee, leave was asked to amend the plaint by stating that even if the properties were not ancestral, still the widow was incompetent to dispose it. It was held that u/s 153, and Order VI, Rule 17, it was not open to court to allow an amendment which altered the real matter of controversy between the parties.

12. In Gopee Lall v. Mussamut Sree Chundraolee Buhoojee (1873) 19 W.R. 12, a person left two widows with authority to adopt, and both adopted. The Plaintiff claimed through the second adopted son, but it was held that under Hindu Law, a second adoption during the existence of a previously adopted son was not allowed. The Plaintiff then wanted to make a claim through the first adopted son, but this was not allowed as being entirely a new case.

13. In Kasinath Das v. Sadasiv Patnaik. (supra), the Plaintiff brought a suit for enforcement of a mortgage but omitted to ask for sale. The subordinate Judge refused a prayer for amendment. Held in appeal that the view of the Subordinate Judge was wrong. The learned Judges said:

The law prohibits any such amendment as would change the fundamental character of the suit; for example, a plaint cannot be so amended as to convert a claim based on contract into an action for tort. But an alteration in the relief does not alter the character of a suit.

14. In Surendra Narain Singh v. Bhai Lal Thakur (1895) ILR 22 Cal. 752, the Plaintiff brought a suit for the rent of a hut which was dismissed. Later on, he wanted to amend by asking payment for use and occupation. This was refused as it would change the whole character of the suit, necessitating a new trial.

15. In Sarat Chand Mitter v. Mohan Bibi (1898) ILR 25 Cal. 371, 389-390, the Plaintiff instituted a suit against the Defendant upon a mortgage. The defence was that at the time the mortgage was executed the Defendant was a minor. The Plaintiff thereupon prayed for an amendment by claiming, in the alternative, that if it was found that the Defendant was a minor, he had induced the Plaintiff to part with his money, upon the fraudulent representation of the infant Defendant. Maclean C.J. stated as follows:

It is urged by the Appellant that the conversion of this, suit, from a suit to enforce a mortgage into a suit for the recovery of money paid upon the footing of a false representation, is the conversion of a suit of one character into a suit of another and inconsistent character. No doubt, in one sense, the original character of the suit was to enforce the mortgage, but the object of the suit was, after all, to recover the money. We must read the proviso with other sections of the Code, and particularly with Sections 42 and 45....It seems to me that if the argument of the Appellant were to prevail, it would virtually prevent an alternative case, which arises out of, and is immediately connected with the same transaction, from ever being raised in the same suit. I do not think, looking at the sections of the Code I have referred to, that that was the. intention of the legislature, nor do I think that the alternative claim, which is set up, is inconsistent with the character of the claim originally made within the meaning of the proviso in question. Reading Sections 42 and 45 of the Code, the intention of the legislature was that, as far as possible, all matters in dispute between the parties relating to the same transaction should be disposed of in the same suit, and I do not think that the proviso to Section 53 was intended to interfere with this. I, therefore, think that Mr. Justice Jenkins was perfectly right in allowing, in the manner he did, the amendment of the plaint.

16. In Upendra Narain Roy v. Janoki Nath Roy (1917) ILR 45 Cal. 305, 317-318, the Plaintiff filed a mortgage suit but did not include a previous mortgage and further charge under the mistaken impression that the court had no jurisdiction. He then asked for an amendment to include the previous mortgage and further charge. Woodroffe J. states as follows:

The Court being desirous of getting at the true facts will allow an amendment subject to three general conditions. Bona fides on the part of the Applicant-possibility of amendment without such prejudice to the other party as cannot be compensated by costs (such as prejudice to rights accrued) and subject to this that the amendment is not such as to turn a suit of one character into a suit of another character. This statement is not made as being exhaustive but as embodying what are porhaps the three chief conditions on which amendment may

be allowed. So it has been held that where a party who has an honest case, has either through ignorance, [see Mukhoda Soondari v. Bam Churn Karmokar (1882) ILR 8 Cal. 871, 875 and Krisnaji v. Wannaji (1892) ILR 18 Bom. 144,] bona fide mistake, or some misapprehension, not placed the real facts before the Court [see Bhyro Dutt v. Mussumat Lekhranee Koor (1871) 16 W.R. 123, Lakshmibai v. Haribir Ravjiu (1872) 9 Bom. H.C.R.I.] or has misconceived his cause of action, and form of suit [Ragho Parashram v. Vishnu Govind (1903) 5 Bom. L.R. 329, Shyamchand Koondoo v. Land Mortgage Bank of India Ltd. (1883) ILR 9 Cal 695, 698, and Krishnaji v. Sitaram (1880) ILR 5 Bom. 496], he should be allowed to amend, where this may be done without injustice to the Defendant.... In short, the object of a trial being to get at the rights of the parties, any amendment which may be required for that purpose should, subject to the well-known general principles governing this matter, be allowed. It has been held that apart from the question of limitation, it is unjust to a Plaintiff to put him to the great expense of a new suit when a reasonable amendment not inconsistent with his case as it originally stood, might equally well answer his purpose as the new suit.

17. In Sailesh Nath Bisi v. J. Chaudhuri (1941) 50 C.W.N. 540, the Plaintiff filed a plaint under the Bengal Money Lenders Act which, did not disclose a cause of action. It was sought to amend the plaint by pleading the fact that on January 1, 1939:, proceedings in execution were pending. Such a fact would afford a cause of action. Held, that no amendment can be made of a plaint which did not disclose a cause of action and the suit must be dismissed under Order VII, Rule 11.

18. In Ahmed Hossain v. Mst. Chembelli (1949) 85 C.L.J. 213, 217-218, the suit was upon a dishonoured cheque. The plaint did not state that any notice of dishonour had been given, so that on the face of it, there was no cause of action. Held, dissenting from Sailesh Nath Bisi v. J. Chaudhury (supra), that an amendment ought to be allowed by permitting the Plaintiff to plead notice of dishonour. Sarkar J, said as follows:

The making of amendments therefore is not really a matter of power of a court but its duty. It is a duty which has been cast upon courts so that substantial justice may be done, for which alone courts exist.... The position therefore shortly put, is that as a fundamental principle the law strongly favours an amendment where it is necessary in the ends of justice and it would require the clearest language to alter this very beneficial legal principle.

19. In Someswar Banerji v. Union of India (1950) 85 C.L.J. 364, 367, the Plaintiff asked for a declaration that he was wrongfully dismissed from his office of Bridge Inspector in the Bengal Assam Railway and for damages and other reliefs. The Judicial Committee held in High Commissioner for India v. I.M. Loll (1948) L.R. 75 IndAp 225, that the prosper relief to ask for as a declaration that the dismissal was a nullity and the Plaintiff continued in service. The Plaintiff asked for amendment to bring his suit in line with the Privy Council decision. It was opposed on the ground

that the alterations in the reliefa, asked for, totally altered the nature of the suit. Bose J. said as follows:

In my judgment to allow an amendment in the case now before me by substituting in the prayer portion of the plaint, a declaration that the Plaintiff is still in the employment of the Defendant and he continues to hold his office as a Bridge Inspector in the said railway, will not tantamount to the institution of any fresh suit, nor will it effect any alteration in the nature of the suit. The facts constituting the cause of action as stated in the body of the plaint remain unaffected.

20. In Rajentra Nath Saha v. Sree Saraswati Press Ltd. (1950) 86 C.L.J. 186, the suit was for specific performance of an agreement with a claim for compensation, in addition to for in substitution for the claim for specific performance. The application was for amendment by deleting the averment of readiness and willingness and to delete the claim for specific performance and substitute a claim for damages simpliciter, for breach of the agreement. The amendment was allowed by Mukharjee J.

21. It is sometimes seriously argued that an amendment should not be allowed, as it introduces a new cause of action. It is not an. inflexible rule that a new cause of action cannot be introduced. The old cause of action may be modified or a new cause of action added; provided that the entire subject-matter of the suit is not altered, such an amendment is permissible. Pinnamaneni Gopala Krishnayya v. Veeramachunemi Ramaswami (1929) 122 Ind. Cas. 174.. The adding of new reliefs is frequently the object of an amendment. As long as the new relief does not convert the suit into a suit of a different character, such new reliefs should be permitted, so as to avoid multiplicity of proceedings [see cases cited above and Ramanunni Kurup v. Yayi Sravanath Manakkal Romen A.I.R (1923) (Mad.) 385.]. New pleas may be added if left out through mistake or an error of judgment, Tukaraim v. Govinda A.I.R.(1926) (Nag.) 385. An alternative case is always allowed to be made and it is no objection that it is alternative to the cause of action already pleaded. Such an amendment should not be disallowed because the court thinks that the alternative case is not likely to succeed. Sobhanadri Appa Rao v. Venkataramayya Appa Rao (1927) AIR (Mad.) 212.

22. In Sheonarayan v. Ramprasad AIR (1923) (Nag.) 241, a suit was brought on an adjusted partnership account. It was allowed to be amended to a suit for accounts of a dissolved partnership. Halifax A.J.C. said as follows:

As has been shown, the amendment alters the character of the suit entirely and u/s 53 of the old Code an amendment of that kind was expressly forbidden. But Section 153 and Rule 17 of Order 6 of the present Code make no express restriction on the discretion of the Court, and in this case it undoubtedly was judicially exercised....

23. In Sultan Abdul Kadir and Others Vs. Mohammad Esuf Rowther and Another, , a suit was brought for partition on the basis of the Plaintiff''s exclusive ownership. By

amendment, the suit was allowed to be changed into a suit for partition based on co-ownership. A modification of the original relief may be allowed, AIR 1927 310 (Nagpur) .

24. In Nur Muhammad Veerjibhai Veelmahomed v. Natwarlal (1919) ILR 45 All. 220, the suit was on an alleged agreement for a lease. The question arose whether the agreement was with the Plaintiff or his father. The Plaintiff, applied for an amendment by adding his father as a party but it was refused. On appeal it was held that an amendment should have been allowed. It was the manifest duty of a judge to try and put an end once for all to all questions that: can arise in relation -to a particular transaction. Where an amendment is necessary. for the purposes of settling all matters in controversy and works no injustice, nor takes by surprise the opposite party, the judge should allow such amendments.

25. The technical rules governing the framing of pleadings are not intended to deprive a litigant of his remedy but to serve the ends of justice. A plaint should be allowed to be corrected, so as to bring the parties face to face, and allow determination on the merits of the real point at issue. (Firm) Rampat Sahu Vs. Bhajju Sahu and Another, . From the decided cases the following principles may be evolved:

(1) A court exists for determination of the real controversy between the parties.

(2) In order to determine the real issues, the court should be liberal in granting amendments of pleadings.

(3) Such amendments will always be allowed except in the following cases:

(a) where the application is not bona fide, or where it is fraudulent and intended to overreach;

(b) where it is made at a stage when it would cause injustice to the opposite party, which cannot be compensated by costs, or where it would necessitate de novo trial of the action;

(c) where it would change the suit into a different kind of a suit, either because of a complete change in the subject-matter of the action, or of the legal relationship between the parties;

(d) where the new cause of action is barred, but such ,an amendment may still be allowed if special circumstances exist;

(e) where the whole of the Plaintiff''s case will be

displaced by the proposed amendment.

(4)Where the subject-matter of the suit is not altered, the following things are permitted by way of amendment:

(a) to modify the original cause of action, or to recast the same to bring out the real dispute between the parties, even if it alters to some extent the character of the suit; provided that the character is not so altered as to change a suit of one kind into a suit of another description altogether;

(b) to add a new cause of action;

(c) to alter the reliefs, or add a new ground of relief;

(d) to add an alternative cause of action.

(5) All kinds of honest mistakes or blunderings may be rectified by amendment, if it can be done without injustice to the opposite party. If a person misconceives his case, he should be allowed to put it right. But a Plaintiff who is unsuccessful in the case originally put forward, cannot then change his front and seek to be successful on another and a completely different ground.

(6) No injustice is ever done to the opposite party if it can be sufficiently compensated by the panacea of costs. Where, however, the rights of innocent third parties have intervened or the parties have changed their position or new rights have accrued, the payment of costs is not an adequate compensation.

(7) Where the above tests are satisfied, not only the court has jurisdiction to allow an amendment, but it is its duty to permit it. The courts must always avoid a multiplicity of legal proceedings. It is the duty of the court to encourage the parties to bring before the court their real disputes, and put an end once for all, to all questions that can arise in relation to the subject-matter of the suit.

26. Applying the above principles to the facts of this case, what do we find? The subject-matter of the suit is the new construction which is being built by the Defendant on her land. All the disputes between the parties in respect of the said construction should be brought before the court and decided. The construction of the wall is only a part of the dispute. The facts stated in the plaint clearly show that the Plaintiffs intended to ask for relief in respect of the continuance of the main construction. In para. 12 of the plaint it is stated that the Defendant proposed to carry on her construction further, as the protruding steel stanchions show. I am, therefore, quite inclined to believe that the omission to ask for an injunction to restrain further construction was a pure mistake. That this is so is further demonstrated by the fact that the Plaintiffs after filing the suit made an application to restrain, not only the construction of the wall, but of the building itself. The suit itself has just been filed and even the time for filing written statement has not arrived. At this early stage of the proceedings, no prejudice will be suffered by the Defendant if the proposed amendment is allowed. Not to allow the amendment will merely mean that the Plaintiffs would have to file another suit in respect of the construction of the building. Therefore, I have not only the jurisdiction to allow the amendment, but under the circumstances, it is my duty to do so.

27. There will, therefore, be an order in terms of Clauses 1, 2 and 3 of the summons with this variation that the amendments will be as shown, not in Ex. "A" to the petition but in the final draft filed, a copy whereof has been supplied to the other side, and which I direct, should be marked as Ex. "B". The Plaintiffs will not only pay the costs of today, but of the day upon which it was heard and adjourned, because the amendments in Ex. "A" were not quite satisfactory. Certified for counsel.