(1871) 08 CAL CK 0006

Calcutta High Court

Case No: None

Gabind Chandra Dutt		APPELLANT
	Vs	
Ganga Dhye and Others Nalit Mohan Das Vs Ganga Dhye and Others		RESPONDENT

Date of Decision: Aug. 9, 1871

Judgement

Phear, J.

I think I ought to allow the proposed amendments to be made. I have considered the reported cases in which amendments have been allowed to be made, and I have looked at the several sections of Act VIII of 1859 which bear upon the point. It is clear that the framers of the Act intended the plaint to be simply a concise statement of the cause of action, and the Act makes it a duty incumbent on the Court to take care that the plaint when filed is an accurate and sufficient statement of the essential ingredients of the plaintiff"s claim. To enable it to discharge this duty, the Act gives the Court full and ample power to amend the plaint when tendered, or to reject it. I think the intention of the framers of the Act was that the Judge should look much more closely into the plaint before admission, than the exigencies of business in this Court render possible, and therefore did not in express terms give the Court power to amend the plaint after it was filed. The next proceeding contemplated in the Act is that the parties should file written statements authenticated by their affirmation, which should contain the facts relevant to the matter of suit set out in the plaint. And then at the first hearing, or commencement of the trial, from these statements of the facts, and from the oral statements which the Court may obtain if it pleases, whether the written statements and oral statements are consistent or not, the Court ought to frame such issues as may seem to it essential to he raised and tried, in order that the matter of suit exhibited in the plaint may be properly determined; and that the Court may be under no misapprehension or difficulty with regard to this part of its functions, the amplest powers are expressly given to the Court to raise issues, or amend any issues already raised, at any stage of the trial. The conclusion

which I draw from this is that the Legislature intended the Court to have power to make all such amendments first in the plaint, and afterwards in the issues--the two essential parts of what we commonly term the pleadings--as might in any case be necessary under the prescribed practice, in order to bring about a fair and proper trial of the matter which the plaintiff came into Court to have tried. We in some slight measure deviate from strict observance of the practice laid down in Act VIII, because the exigencies of business in this Court are such that it is in truth impossible for the Judge to act as legal adviser to the plaintiff when he files his plaint, and this Court has power to mould its procedure as it thinks fit, only keeping as near as it reasonably can to the procedure prescribed by Act VIII. Accordingly, we very often allow the sufficiency of the plaint to be discussed after it has been filed, in an application made by the defendant to take the plaint off the file; and I think we have power, in like manner after the plaint has been filed, and the summons served, on the application of the plaintiff himself, to amend the plaint if an amendment be needed, in order to make it more correctly set out the plaintiff"s cause and right of suit; but, of course, I need hardly say the Court will never allow this to be done to the detriment of the defendant. I have looked through the plaints in these two cases, as originally drawn, and the proposed amendments. It appears to me that the amended form is the one in which the plaintiff ought to have presented his cause of action, and that Nandamall and Bhinmall ought to be put on the record, instead of the Official Assignee. It does not appear that the defendants have as yet filed their written statement, or have been misled as to the nature of the plaintiff"s suit. I think it right then that these amendments should be made, of course, at the cost of the plaintiffs; and the defendant must be allowed the same time to file his written statement, as he would have had if the plaint had been originally filed in its amended form.

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[2]The observation was made in the course of the argument in the case where the question, as to the amendment of plaints, arose. The Chief Justice supported his opinion by a passage from the judgment of the Privy Council, in the case of Mohummud Zahoor Ali Khan v. Mussamat Thakooranee Rutta Koer, 11 Moore"s I.A., 486.--Reporter.