

Suraj Prakash Bhasin

Vs

Smt. Raj Rani Bhasin and Others

Civil Appeal No. 1953 of 1978

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

29.04.1980

JUDGMENT

KRISHNA IYER, J. –

1. The suave submissions and sure assertions made by Miss Seita Vaidialingam, counsel for the appellant, are worthy of a better cause than a shaky challenge in this court to a revisional order by the High Court refusing to demolish a discretionary exercise by the trial court which allowed the amendment of a plaint in a suit for partition by inclusion of the relief of dissolution of partnership together with rendition of accounts and for the plaintiff's share therein. The parties are relations but the fight is bitter, perhaps because the subject-matter is financially succulent, being a cinema theatre and a going cinema business. To start with, the plaintiff sought relief by way of partition of his share in the super-structure of the theatre. The claim was contested by the appellant, issues were struck, two years passed, and then the respondent (plaintiff) woke up to the need for an amendment of the plaint in the shape of additional reliefs and supportive averments. The new reliefs proceeded on the footing that there was a partnership of the theatre business in which the plaintiff had a share and the demand now made was to render an account of the cinema business (M/s. Prakash Talkies) from March 1, 1973. It must be mentioned that even in the original plaint there was reference to a partnership arrangement and the plaintiff's share therein although relief on that footing was reserved by separate action. Apparently realising that prolixity of litigation could be avoided and dissolution of partnership could finally separate the parties and quantify their respective shares the amendment was sought.

2. The defendant-appellant furiously opposed the amendment on the ground that the entire character of the litigation was sought to be changed, that what was a partition suit was now re-incarnating as a partnership dissolution action, that the scope of the suit would be materially altered and that pleas available to resist the claim of the plaintiff would be lost to the prejudice of the defendant if the amendment were allowed. Such metamorphosis under guise of amendment was, according to the appellant, impermissible.

3. The trial court, in exercise of its discretion, allowed the amendment and the High Court in revision, refused to interfere. In the view of the courts below there was not such a total transformation of the nature of the litigation as to deny the prayer for amendment. On the other hand, the facts were substantially the same; the case of partnership was already present in embryonic form in the original plaint and multiplicity of suits would be avoided by grant of the amendment. "Thus, there is no basis whatsoever for interference and this revision application is hence liable to be dismissed", concluded the High Court.

4. Counsel for the appellant has come up to this Court securing special leave and we are free to concede that it pressure of advocacy can win a weak case, success should have greeted Seita Vaidialingam. But when the position of law is so clear, when the jurisdiction of this Court is so exceptional and when the discretion exercised by one court and confirmed by another is not glaringly unjust or illegal, the chances of allowance of an appeal are obviously remote.

5. The arguments urged with vigour by counsel for the appellant were calculated to make out the gross delay on the part of the plaintiff-respondent in seeking amendment, the dubious device of developing a case of partnership and seeking relief thereon while leaving such a cause dormant in the original plaint and the utter untenability of the new-fangled version of a partnership. Granting these grounds for the sake of argument, we are far from satisfied that the trial court had been guilty of such misexercise of discretion as to call for this Court's intervention. It is well known that amendments of pleadings are within the discretion of the court although judicial discretion is not wild humour. Justice Cardozo, with juristic accuracy and literary felicity, expressed exquisitely the principles governing judicial discretion : (THE NATURE OF THE JUDICIAL PROCEEDINGS, Yale University Press, (1921), p. 141)

The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains.

6. The liberal principles which guide the exercise of discretion in allowing amendments have been laid down in numerous decisions of this Court. Multiplicity of proceedings being avoided is one criterion. Amendments which do not totally alter the character of the action are readily granted while care is taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment of pleadings. The Court must be guided by the rule of justice expressed by the Privy Council in *Ma Shwe Mya v. Maung Po Hnaung* : (AIR 1922 PC 249, 250-51; (See AIR Commentaries on C.P.C., 1908, 9th Edn., Vol.2, pp. 1283-84).)

All rules of court are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless, no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.

7. It follows that nothing so shocking as has been urged by the appellant's counsel has taken place here. The plea based on partnership is neither a virgin case nor a violent departure from the original. After all, the appellant-defendant has a full opportunity to meet the case presented by the amendment. Maybe, a variety of circumstances some of which were mentioned before us might, if successfully established, disprove the veracity of the plaintiff's case. They are matters bearing on the merits of the case, not on the tenability of the amendment.

8. Counsel also urged that there had been gross remissness, to say the least, on the part of the plaintiff-respondent in seeking amendment at a late stage and with a tricky touch. In such cases we must remember the power of the court to resort to the universal panacea for the pathology of negligence, indifference, slipshodness and other delinquencies of litigants. The court, while

allowing amendments, will, in such case, order heavy costs. In the present case, the amendment has been allowed, but the condition of payment of costs has been imposed. In these circumstances, we do not find our way to do anything else except to dismiss the appeal.

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