

Haridas Aildas Thadani and Others

Vs

Godrej Rustom Kermani

Civil Appeal No. 2025 of 1981

(Syed M. Fazal Ali, R.B. Misra JJ)

16.11.1981

JUDGMENT

In this appeal by special leave, after hearing counsel for the parties we are of the opinion that the High Court was clearly wrong in setting aside the order of the District Judge who had exercised a sound discretion in allowing the amendment of the plaint sought by the plaintiff in the circumstances of the case. The District Judge clearly found that if the amendment was allowed it would not cause any grave or serious prejudice to the defendant. All that the plaintiff sought by way of amendment was to insert a relief for recovery of possession. Neither the nature of the suit was altered nor was there any question of any valuable right of limitation having accrued to the defendant being taken away by the proposed amendment. In case of Prigonda Hongonda Patil v. Kalgonda Shidgonda Patil (1957 SCR 595 : AIR 1957 SC 363 : 1957 SCJ 371) this Court has held that the test for allowing the amendment is to find out whether the proposed amendment works any serious injustice to the other side. It is well settled that the court should be extremely liberal in granting prayer of amendment of pleading unless serious injustice or irreparable loss is caused to the other side. It is also clear that a revision court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances. We find no such grounds in this case. On the other hand in the instant case, there is absolutely no question of any injustice being done to the defendant if he is compensated by heavy costs. In the facts and circumstances of the case we are satisfied that the High Court erred in law in interfering in revision by reversing the discretionary order of the District Judge. For these reasons, we allow this appeal, set aside the judgment of the High Court and restore the judgment of the District Judge. The plaintiff will file his amended plaint within a month from today. The plaintiff shall also pay a sum of Rs. 4,000 as costs to the defendant, failing which the order allowing the appeal and granting amendment will stand cancelled. Costs must be paid within one month from today. The appellant may withdraw the amount of Rs. 2,000 towards security deposited in this Court. After the amended plaint is filed, additional statements may be filed by the defendant if so advised. The appeal is allowed accordingly.

</html