

B. K. Narayana Pillai

Vs

Parameswaran Pillai and Another

Civil Appeals Nos. 7222-23 of 1999

(S. P. Kurdukar, R. P. Sethi JJ)

13.12.1999

JUDGMENT

SETHI J.:-

1. Leave granted. Heard.

2. The respondent-plaintiff filed a suit against the appellant-defendant praying for the grant of mandatory and prohibitory injunction seeking eviction allegedly on the ground of this being a licensee. In the written statement filed the appellant herein pleaded that the was not a licensee but a lessee. During the trial of the suit the appellant filed an application for amendment of the written statement to incorporate an alternative plea that in case the Court found that the defendant was a licensee, he was not liable to be evicted as according to him the licence was irrevocable. He further wanted to add a plea that the as acting upon the licence he has executed work of permanent nature and incurred expenses in execution of the same, his licence cannot be revoked by the grantor under Section 60(b) of the Indian Easements Act, 1882. The prayer was rejected by the trial court as also by the High Court on the ground that the proposed amendment was mutually destructive which, if allowed, would amount to permitting the defendant to withdraw the admission allegedly made by him in the main written statement.

3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to later or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Court and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should be adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

4. This court in *A. K. Gupta & Sons Ltd, v. Damodar Valley Corpn.* (AIR 1967 SC 96 : (1966) 1 SCR 796)held:

"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: *Weldon v. Neal* ((1887) 19 QBD 394 : 56 LJ QB 621). But it is also well recognized 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: See *Charan Das v. Amir Khan* (AIR 1921 PC 50 : ILR 48 Cal 110) and *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. Ltd., v. Jardine Skinner and Co.* (AIR 1957 SC 357 : 1957 SCR 438).

The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith*) (1884 26 Ch 891 : 51 LT 729) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (*Kisandas Rupchand v. Rachappa Vithoba Shilwant*) (LIR (1990) 33 Bom 644 : 11 Bom LR 1042) approved in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* (AIR 1957 SC 363 : 1957 SCR 595).

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke v. Gill* ((1873) 8 CP 107 : 42 LJPC 98 : 28 LT 32) in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corpn Ltd.* ((1962 2 All ER 24 (CA)) and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of facts': *Dornan v. J.W. Ellis and Co. Ltd.* ((1962) 1 All ER 24 (CA)) This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of facts to the prejudice of any right acquired by any party by lapse of time."

Again in *Ganga Bai v. Vijay Kumar* ((1974) 2 SCC 393) this Court held (SCC p. 399, para 22)

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, 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."

In *Ganesh Trading Co. v. Moji Ram* ((1978) 2 SCC 91) it was held: (SCC p.93, para 4)

"4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience of expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

The principle applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed with the necessary determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original list was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted positions of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for ejecting the application of amendment of plaint or written statement.

5. In this appeal the appellant-defendant wanted to amend the written statement by taking a plea this in case he is not held a lessee, he was entitled to the benefit of Section 60(b) of the Indian Easements Act, 1882. Learned counsel for the appellant is not interested in incorporation of the other pleas raised in the application seeking amendment. The plea sought to be raised is neither inconsistent nor repugnant to the pleas already raised in defence. The alternative plea sought to be incorporated in the written statement is in fact the extension of the plea of the respondent-plaintiff and rebuttal to the issued framed regarding liability of the appellant of being dispossessed on proof of the fact that he was a licensee liable to be evicted in accordance with the provisions of law. The mere fact that the appellant had filed the application after a prolonged delay cannot be made a ground for ejecting his prayer particularly when the respondent-plaintiff could be compensated by costs. We do not agree with the finding of the High Court that the proposed amendment virtually amounted to withdrawal of any admission made by the appellant and that such withdrawal was likely to cause irretrievable prejudice to the respondent.

6. It has been stated on behalf of the respondent at the Bar that the appellant having not come to the Court with clean hands is not entitled to any discretionary relief. It is contended that the appellant has not paid licence fee as per the terms of the additional licence granted in his favour. It has been stated that in case the appeals are allowed the appellant-defendant be directed to pay all the arrears of the licence fee. We find substance in the submission made on behalf of the respondents.

7. Under the circumstances, the appeals are allowed by setting aside the orders impugned. The appellant-defendant is permitted to amend the written statement to the extent of incorporating the plea of his entitlement to the benefit of Section 60(b) of the Indian Easements Act, 1882 only subject to his paying all the arrears on account of licence fee and costs assessed at Rs. 3000 within a period of one month from the date the parties appear in the trial court. Costs of the appeals are made easy.