Sampath Kumar vs Ayyakannu And Anr on 13 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3369, 2002 (7) SCC 559, 2002 AIR SCW 3925, (2002) 4 ALLMR 866 (SC), 2002 (3) BLJR 2290, 2002 (9) SRJ 198, 2002 (6) SCALE 544, 2002 (5) SLT 360, 2002 (4) ALL MR 866, (2002) 7 JT 182 (SC), (2003) 1 JCR 283 (SC), 2002 BLJR 3 2290, 2003 (1) ALL CJ 1, (2003) 1 ALLINDCAS 65 (SC), (2002) ILR (KANT) (4) 5055, (2002) 49 ALL LR 591, (2002) 3 CALLT 296, (2002) 4 ICC 210, (2002) 2 CAL HN 627, (2002) 2 ALL RENTCAS 594, (2002) 3 CIVILCOURTC 364, (2002) 3 MAD LJ 160, (2003) 2 MAD LW 21, (2003) REVDEC 148, (2003) 1 RAJ LW 49, (2002) 4 SCJ 321, (2002) 6 ANDHLD 63, (2002) 6 SUPREME 424, (2002) 4 RECCIVR 566, (2002) 4 ICC 859, (2002) 6 SCALE 544, (2002) WLC(SC)CVL 797, (2003) 1 UC 1, (2003) 1 ALL WC 18, (2003) 1 CAL HN 184, (2003) 1 CIVLJ 218, (2002) 4 CURCC 1

Bench: R.C. Lahoti, Brijesh Kumar

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           CASE NO.:
Appeal (civil)  5839 of 2002

PETITIONER:
SAMPATH KUMAR

RESPONDENT:
AYYAKANNU AND ANR.

DATE OF JUDGMENT: 13/09/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
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JUDGMENT 2002 Supp(2) SCR 397 The following Order of the Court was delivered : Leave granted.

The plaintiff-appellant filed a suit for issuance of permanent prohibitory injunction alleging the plaintiff-appellant's possession over the suit property which is an agricultural land. The defendant in his written statement denied the plaint averments and pleaded that on the date of the institution of the suit he was in possession of the suit property and therefore the suit for injunction was liable to be dismissed. The suit was instituted in the year 1988.

In the year 1999, but before the commencement of the trial, the plaintiff moved an application under Order VI Rule 17 CPC seeking an amendment in the plaint. It is alleged in the application that in January 1989, that is, during the pendency of the suit, the defendant has forcibly dispossessed the

plaintiff. On such averment the plaintiff sought for relief of declaration of title to the suit property and consequential relief of the delivery of possession. The suit was proposed to be valued accordingly along with payment of court fee. The prayer for amendment was opposed on behalf of the defendant-respondent submitting that the plaintiff was changing the cause of action through amendment which was not permissible and also on the ground that the defendant has perfected his title also by adverse possession over the suit property rendering the suit for recovery of possession barred by time and therefore a valuable right had accrued to the defendant which was sought to be taken away by the proposed amendment.

The Trial Court rejected the application for amendment. During the course of its order the Court observed that the appropriate course for the plaintiff was to bring a new suit. This order has been maintained by the High Court in revision. Although the plaintiff had sought for some more amendment so as to correct the description of the suit property; however the pan of the prayer for amendment was not later pressed by the plaintiff before the Court.

The short question arising for decision is whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession.

It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

In Mst. Rukhmabai v. Lala Laxminarayan and Ors., AIR (1960) 335, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the

suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, [2001] % SCC 561.

In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in culcating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

On the averments made in the application, the same ought to have been allowed. If the facts alleged by plaintiff are not correct it is open for the defendant to take such plea in the written statement and if the plaintiff fails in substantiating the factual averments and/ or the defendant succeeds in substantiating the plea which he would obviously be permitted to raise in his pleading by way of consequential amendment then the suit shall be liable to be dismissed. The defendant is not prejudiced, more so when the amendment was sought for commencement of the trial.

For the foregoing reasons, the appeal is allowed. The impugned orders of the High Court and the Trial Court are set aside. The plaintiff is permitted to incorporate the pleas sought to be raised by

way of amendment in the original plaint foregoing the plea to the extent given up by him before the Trial Court, However, in view of the delay in making the application for amendment, it b directed that the plaintiff shall pay a cost of Rs. 2,000 (Rupees Two Thousand only) as a condition precedent to incorporating the amendment in the plaint. The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed.