Gajanan Jaikishan Joshi vs Prabhakar Mohanlal Kalwar on 13 December, 1989

Equivalent citations: 1989 SCR, SUPL. (2) 474 1990 SCC (1) 166, AIRONLINE 1989 SC 42, 1990 (1) SCC 166, (1990) MAH LJ 212, 1990 ALL CJ 177, (1990) ILR (KANT) 3273, (1990) 1 CUR CC 262, (1990) 2 LAND LR 205, (1990) 1 SCJ 468, (1990) 1 GUJ LH 17, (1990) 2 CIV LJ 23, (1990) 1 REN CR 229, (1990) 1 BLJ 650, (1989) 4 JT 524, (1991) 1 LJR 674, (1990) 1 LJR 674, (1990) 1 RRR 222, (1989) 4 JT 524 (SC)

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, M.H. Kania

PETITIONER:
GAJANAN JAIKISHAN JOSHI

Vs.

RESPONDENT:
PRABHAKAR MOHANLAL KALWAR

DATE OF JUDGMENT13/12/1989

BENCH:
VENKATARAMIAH, E.S. (CJ)
BENCH:
VENKATARAMIAH, E.S. (CJ)
KANIA, M.H.

CITATION:
1989 SCR Supl. (2) 474 1990 SCC (1) 166
JT 1989 (4) 524 1989 SCALE (2)1323

ACT:
Civil Procedure Code, 1908: Order VI Rule 17--Plaint-Amendment of--When to be permitted.
Specific Relief Act, 1963: Section 16(c)--Suit for specific performance-Amendment of plaint----Permissibility of.

HEADNOTE:
For selling an immovable property, respondent entered into an agreement with the appellant. Appellant paid part of the consideration and he was put in possession of the

property. Since the respondent failed to execute the registered sale-deed, the appellant filed a suit. There was no specific averment in the suit that the appellant was and had always been ready and willing to perform his part of the agreement.

Respondent contended inter-alia that the suit was not maintainable for non-compliance with the provisions of Section 16(c) of the Specific Relief Act, 1963. This issue was directed to be tried as a preliminary issue. At that stage, the appellant applied for leave to amend the plaint by incorporating an averment that he was always and had been ready and willing to perform his part of the agreement. The trial court rejected the application.

The revision petition filed in the High Court was dismissed. The High Court took the view that the application for amendment was filed beyond the period of limitation and cannot be granted, as a vested interest of the respondent would be disturbed.

This appeal is against the judgment of the High Court.

Allowing the appeal, this Court,

HELD: 1.1 Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that. where a plaintiff seeks to amend by setting up a fresh

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claim in respect of a cause of action which, since the institution of the suit, had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. Courts would as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether application for amendment should be granted and does not affect the power of the Court to order it, if that is required in the interest of justice. [477A-D]

1.2 In the present case, no fresh cause of action was sought to be introduced by the amendment applied for. All that the appellant sought to do was to complete the cause of action for specific performance and add an averment which required to be added in view of the provisions of sub-section (c) of Section 16 of the Specific Relief Act. There was no fresh cause of action sought to be introduced by the amendment and hence, no question of causing any injustice to the respondent on that account arose. [477E-F]

Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors., AIR 1957 SC 363 and L.J. Leach & Co. and Anr. v. Messrs Jardine Skinner & Co., AIR 1957 SC 357, relied on.

Ouseph Varghese v. Joseph Aley & Ors., [1963] 2 SCC 539, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1638 of 1987.

From the Judgment and Order dated 28.11.1986 of the Karnataka High Court in C.R.P. No. 365 of 1984. S.B. Bhasme and A.S. Bhasme for the Appellant. R.S. Hegde and S.N. Bhat for the Respondent. The Judgment of the Court was delivered by KANIA, J. This is an appeal from a judgment and order of a learned Single Judge of the Karnataka High Court. Only a few facts are necessary to appreciate the contro- versy raised before us.

The appellant herein was the plaintiff in Original Suit No. 103 of 1981 in the Court of 2nd Additional Civil Judge, Belgaum. It was the case of the appellant in the plaint that on July 16, 1976 the respondentdefendant entered into an agreement in his favour for sale of the suit property comprising a shop and a bhatti room situated at Kirloskar Road, Belgaum City for a sum of Rs.20,000. The appellant paid to the respondent as part consideration a sum of Rs.5,000 and pursuant to the agreement for sale the appellant was put in possession of the suit property. The sale agreement provided that the registered sale deed was to be executed by the respondent after securing a No Objection certificate or permission from the competent officer as required under the Karnataka Urban Land Ceiling Act and within one month of the grant of such permission. The respondent received the No Objection or permission as aforesaid on March 31, 1981 but failed to execute the registered deed of sale as provided under the said agreement. Hence, on 30th June, 1981, the appellant filed the present suit. It may be observed here that in the plaint, there was no specific averment that the appellant was and had always been ready and willing to perform his part of the said agreement. The respondent filed a written statement raising several contentions and inter alia raised the contention that the suit was not maintain- able for non-compliance with the provisions of section 16(c) of the Specific Relief Act, 1963. The issue as to whether the suit was not maintainable on the aforesaid ground was directed to be tried as a preliminary issue. At this stage, the appellant applied for leave to amend the plaint by incorporating an averment in the plaint that the appellant was and had always been ready and willing to perform his part of the said agreement. The learned Additional Civil Judge before whom the said application was made, rejected the same. A revision petition was preferred by the appellant against the judgment of the learned Additional Civil Judge to the High Court of Karnataka but the said revision peti- tion was dismissed by a learned Single Judge of the said High Court as aforesaid. The learned judge took the view that the application for amendment was filed beyond the period of limitation and the application could not be grant- ed as a vested right of the respondent would be disturbed by allowing the said amendment. It is the correctness of this decision which is challenged before us.

In the leading case of Pirgonda Hongonda Patii v. Kal- gonda Shidgonda Patil and Others, AIR 1957 SC 363 a Bench comprising three learned Judges of this Court laid down the principles which should govern the question of granting or disallowing amendments. It was held by this Court that all amendments ought to be allowed which satisfy the two conditions: (a) not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in

controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the plead- ing had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriv- ing him of a good defence to the claim.

In L.J. Leach & Co. & Anr. v. Messrs Jardine Skinner & Co., AIR 1957 SC 357 another Bench comprising three learned Judges of this Court held that it is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice.

If these principles are to be followed, there is little doubt that the learned judge was in error in rejecting the application for amendment made by the appellant. In the present case no fresh cause of action was sought to be introduced by the amendment applied for. All that the appel- lant sought to do was to complete the cause of action for specific performance for which relief he had already prayed. It was only that one averment required in law to be made in a plaint in a suit for specific performance in view of the provisions of sub-section (c) of section 16 of the Specific Relief Act was not made, probably on account of some over- sight or mistake of the lawyer who drafted the plaint and that error was sought to be rectified by the amendment applied for. There was no fresh cause of action sought to be introduced by the amendment and hence, no question of caus- ing any injustice to the respondent on that account arose. Learned counsel for the respondent placed strong reli- ance on the decision of this Court in Ouseph Varghese v. Joseph Aley and Others, [1963] 2 SCC 539. In that case, a suit for specific performance was filed by the plaintiff on the basis of an alleged agreement with the first defendant. The defendant denied the agreement and went on to state that just before his death her husband had agreed to sell to the plaintiff Item No. 1 of the suit property less one acre of paddy field for a sum of Rs. 11,000 but due to the illness of her hus- band, the sale in question could not be effected. After the written statement to this effect was filed, no application for amendment to the plaint was made. The Trial Court de- creed the suit. In the appeal, the High Court did not accept the agreement pleaded by the plaintiff, but granted a decree on the basis of the agreement set out in the written state- ment. It was held by a Bench comprising two learned Judges of this Court that the agreement pleaded by the defendant was wholly different from that pleaded by the plaintiff. The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement and hence, no decree on the basis of that agreement should have been passed in his favour as done by the High Court. The Court held that it was well settled that in a suit for specific performance, the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation in the plaint, the suit is not maintainable. In our opinion, this case does not lend any support to the argument of the learned counsel for the respondent, as in the present case there is no question of any decree being passed on the basis of any agreement other than the one pleaded by the appellant in the plaint. In the result, the judgment and order passed by the learned Single Judge are

set aside. The appeal is allowed. The amendment applied for by the appellant is allowed. The amendment to be carried out by the appellant at his own expense within eight weeks of a certified copy of this order being received by the Trial Court. The Trial Court shall thereafter give time to the respondent to file a supplemen- tary written statement, if so advised, and dispose of the case on merits according to law. There will be no order as to costs of the appeal.

G.N. Appeal allowed.