IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1178 of 1994

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

USMANGANI HAZAM
VERSUS
ABDULGANI MAHAMADBHAI SHAIKH

Appearance:
MR CJ VIN for Petitioners
MR EE SAIYED for Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Judgment : 25/02/1999

C.A.V. JUDGMENT

1. This revision application is directed by the defendants-petitioners against the order of the 2nd

Joint Civil Judge (S.D.) Surat, dated 31st May, 1994 in Regular Civil Suit No.661/93 below Ex.64 under which the application filed by them for amendment of the written statement has been rejected.

2. The application ex.64 has been filed by the petitioners on the file of this civil revision application. The proposed amendment in the written statement, reads as under:

> Siddiqwali Mahmmad died sometimes in 1962. He had a daughter namely Rabiya who died sometimes in 1950. Siddiqmiya had a son namely Abdul Rehman who died in Africa sometimes in 1986. Siddiqmiya has another son called Usman who resides in Africa and is holedin. Abdul Rehman has two sons namely 1. Mahmmad shafi and 2. Abdul Hamid. Both of them reside in Africa. Abdul Rehman has a daughter called Farida who also resides in Africa and she has a son called Lukman Rehman. The name of Farida's husband is Rehman and Farida had a son through her husband and the name of her son is Lukmand who resides in Africa. The letter produced by a separate list was written by Lukma Rehman from South Africa and this letter was written to Hajrabibi. The said Hajrabibi is a daughter of Siddiqwali Mahmmad. On taking into consideration the above genealogy, it is found that Abdul Rehman was maternal uncle of mine. i.e. the defendant No.1 and Farida Rehman is a daughter of the maternal uncle of mine. i.e. the defendant. Thus when Siddiq got died, his two sons namely 1. Abdul Rehman and 2. Usman were alive. At present Usman is alive. Abdul Rehman is dead.

3. This application has been filed on 30th March, 1994 and it is not in dispute that at the very initial stage of the suit, this application for amendment of written statement has been filed.

4. Learned counsel for the petitioners contended that it is a case where the prayer has been made by the defendants-petitioners for amendment of the written statement and the courts should have been very very liberal for grant of such amendment. It has next been contended that this amendment has been prayed for at the initial stage of the suit. Carrying this contention further, it is contended that the reasons given by the learned trial court for rejection of this application is wholly perverse. The learned trial court has not given

out how this amendment will put the plaintiff in an embarrassing position. Lastly, it is contended that it is permissible to the defendants to take the inconsistent plea in the written statement.

5. On the other hand, learned counsel for the respondents contended that this amendment as prayed for is clearly inconsistent with the case originally pleaded in the written statement. In fact, by this amendment, the defendants-petitioners want to make out an altogether inconsistent defence. They claim themselves to be exclusive owner of the property. Now by this amendment it has been given out as if they have some share in the property and as such the amendment if is allowed then it will certainly be very embarrassing for the plaintiff-respondent.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. In the case of Jai Jai Ram Manoharlal vs. National Building Material Supply reported in AIR 1969 SC 1267 and in the case of M/s. Ganesh Trading Co. vs. Moji Ram reported in AIR 1978 SC 484, their Lordships of the Hon'ble Supreme Court stated :

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

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 or 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.

5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there the Court will refuse to permit it if it amounts to depriving the party against which a suit is spending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not by itself constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured,so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.

In the case of G. Nagamma vs. Siromanamma reported in

1996 (2) SCC 25 their Lordships of the Hon'ble Supreme Court held that by amendment, inconsistent pleas can be permitted to be taken by the litigant.

8. Learned trial court has not considered the provisions of Order 6 Rule 17, C.P.C. in its correct perspective. It has further failed to consider an important fact that the defendants-petitioners prayed for amendment of their written statements at the very initial stage of the suit. The amendment as proposed for is nothing but only some factual averments sought to be made in the written statement. Even if it is taken that how these averments sought to be incorporated in the written statement may amount to inconsistent plea in the written statement, then it is still permissible to the defendants-petitioners to raise the same. It is not given out how this amendment, if is permitted to be made by the defendants-petitioners, it will be embarrassing for the plaintiff-respondent. The law of amendment of plaint is well settled and this order of the learned trial court is clearly contrary to the well settled principles of law on the amendment of the plaint.

9. It is a case where the learned trial court has committed procedural irregularity in passing of the impugned order which will affect its final decision. The impugned order if allowed to stand will certainly occasion failure of justice to the defendants-petitioners. On the contrary, if the amendment as prayed for by the petitioners is permitted to be made in the written statement it will not cause any injury or failure of justice to the plaintiff-respondent. It is always open to the plaintiff to contest these pleadings on merits by filing a replica if he considers necessary in accordance with law.

10. In the result, this civil revision application succeeds and the same is allowed. The impugned order of the court below dated 31st May, 1994 in Regular Civil Suit No.661/93 below Ex.64 is quashed and set aside and Ex.64 filed by the defendants-petitioners is granted subject to the payment of Rs.1000/- as costs to the respondent-plaintiff and they are permitted to amend the written statement as proposed therein. In the facts of this case, no order as to costs. Rule is made absolute.

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