Joginder Kaur and another *v.* Jasbir Singh and others

Mehar Singh, J.

for pre-emption upon a cause of action which accrued to a person in his life-time passes at his death to his successor who inherits the property through which the right had accrued: *Faqir Ali Shah* v. *Ram Kishan* (2) and other cases in Punjab referred to at page 145 of the Law of Pre-emption in the Punjab by Ellis, 1961 Edition. The position of the law is the same in Allahabad as has been held by a Full Bench of that Court in *Wajid Ali* v. *Shaban* (3). Lately in *Lal Singh* v. *Mohan Singh*, Second Appeal from Order No. 19, of 1963, decided on July 31, 1963, Harbans Singh, J., has followed the previous decisions of the Punjab Chief Court in a case exactly parallel to the present case pointing out that the test laid down in the decided cases is that the heir of a deceased plaintiff in a pre-emption suit can continue the suit if, at the date of the sale, he had an independent right to pre-empt. The sons of the deceased pre-emptor in the present case had such a right as had already been pointed out. The order of the trial Court in impleading them as legal representatives of the deceased plaintiff in this pre-emption suit is, in the circumstances, not open to any argument what soever.

The revision application fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

Falshaw, C. J.

D. FALSHAW, C. J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

REV. G. HARISH CHAPLAIN,—*Petitioner.*

versus

PREM NATH AND OTHERS,—*Respondents.*

Civil Revision No. 459 of 1965.

1965

August, 26th.

Code of Civil Procedure (V of 1908)—Order 6 rule 17—Amendment of pleadings—When to be allowed—Discretion—How to be exercised—Amendment of plaint to admit certain documents in evidence—Whether to be allowed.

Held, that sub-rule (1) of rule 17 of Order 6 of the Code of Civil Procedure has two portions; the first portion leaves the matter to the discretion of the Court whereas the second portion apparently makes it imperative for the Court to make all such amendments as may be necessary for determining the real matter in controversy between the parties. This duty appears to be a rule of conduct as distinguished from a rigid rule of

(2) 133 P.R. 1907 (F.B.).
(3) I.L.R. (1909) 31 All. 623.

law never to be departed from and is subject to the overriding consideration of preventing injustice and abuse of the process of the Court. This statutory provision confers a very wide, discretion in the matter of amendment of pleadings. Though this power may generally call for liberal exercise, the discretion, like all other matters left to a Court's discretion, has to be exercised in accordance with judicial principles, rules of reason, and not arbitrarily or at the whim of the Court in a vague and fanciful manner. Judicial discretion, as the very expression suggests, demands a disciplined and responsible approach, which in truth, represents a compromise between the idea that those who possess power should be trusted with free hand and not tied down by narrow formula, and the competing notion that some contingent control must be retained over them in case they act in an unreasonable way. The Court possessing discretion must use its judgment by putting its mind to the case and not approach the matter with its mind already made.

Held, that it is not permissible to a court to direct the plaintiff to amend his plaint in case he wants certain documents to be admitted in evidence and placed on the record. Evidence is to be admitted if it is relevant to the issue, arising out of the pleadings; and at the stage of evidence, the Court is not, strictly speaking, concerned with the question of amendment of pleadings. If the pleadings and the issues framed thereon do not justify admission of the documentary evidence in question, then the court will be transgressing the bonds of its legitimate function in suggesting to the plaintiff to amend the plaint in order to bring the documents within the realm of relevancy and in adjourning the case for that purpose.

Held, that in order to bring a case within the second portion of sub-rule (i) of rule 17 of Order VI, which is couched in imperative language, the amendment must be necessary for determining the real question in controversy between the parties. The real question in controversy will depend on the facts and circumstances, as disclosed by pleadings in each case, and it cannot be dreamed up by reference to anything outside the pleadings. Without the defendants' seeking any further or better particulars and without the plaintiff praying for amendment of his pleadings, for the Court below to come to the conclusion that the plaint should be amended and on the basis of such amendment specific issue should be framed "in order to reach at a proper decision", and to make the order, appears to be tainted with serious legal infirmity calling for interference on revision by the High Court.

Petition under section 115 *of the Code of Civil Procedure for revision of the order of Shri Aftab Singh, Subordinate Judge, 1st Class, Kandaghat, Camp Simla, dated 5th April,* 1965 *allowing the proposed amendment of the plaint on payment of Rs.* 16.

I. K. MEHTA, ADVOCATE, for the Petitioner.

PRANESHWAR LAL, ADVOCATE, for the Respondents.

JUDGMENT.

Dua, J.

DUA, J.—This revision is directed against the order of the learned Subordinate Judge, Kandaghat, (Camp Simla), dated 5th April, 1965, allowing amendment of the plaint.

The respondent Prem Nath, instituted a suit for damages on the allegation that the defendants had defamed the plaintiff by passing a resolution which contained certain statements defamatory of the plaintiff. This suit was instituted in August, 1964. Three separate written statements, one by defendants Nos. 1 to 3, the second by defendant No. 4 and the third by defendant Nos. 5 to 7 were duly filed and so was a consolidated replication on behalf of the plaintiff to the respective written statements of the various defendants. Issues were settled on 8th January, 1965, and 11th March, 1965, was fixed for the plaintiff's evidence. On that date, the learned counsel for the plaintiff made a statement to the effect that he had summoned Shri G. R. Samuel, who is also the Secretary of the Y.M.C.A., as his witness and he had also summoned some records mentioned in the application for summoning witnesses. Those records had not been produced by the defendant. The counsel had also summoned four witnesses who could not be examined without the said documents and also without copies of some other documents, for certified copies of which he had made an application. On this ground, adjournment was sought. It appears that Shri Samuel had also made an application that the documents summoned from him bore no relevancy to the case. The counsel for the parties referred to the pleadings, it being urged on behalf of the plaintiff that he had made some averments regarding personal animosity and grudges borne by some of the defendants and that these animosities and grudges were due to the fact that the plaintiff while in office had pointed out certain defalcations in accounts, etc., by the defendants and it was in this background that the defendants got annoyed and eventually had the plaintiff removed from the office. The learned Subordinate Judge felt that such allegations ought substantially to have been made in the plaint because this case is similar to the one in which parties rely on misrepresentation, fraud, breach of trust, etc., within the contemplation of Order VI, Rule 4, Code of Civil Procedure. Of Course, this provision has not been mentioned by the Court below in the order, but I have no doubt that this is what the Court was thinking

Rev. G. Harish Chaplain
v.
Prem Nath and others

Dua, J.

of when its order spoke of the allegations in the case in hand being similar to those of fraud, etc. The Court also felt inclined to take the view that there should be a specific issue on this point in order to reach a proper decision in the case. On this view of the matter, the Court ordered that "if the plaintiff wants to prove these facts as have been orally alleged today, he must amend his plaint and include these particulars in the plaint so as to enable the Court to reach at a proper decision. In case he fails to amend the plaint, he cannot be permitted to summon these documents which in that eventuality will be considered as having no relevancy in this case". Certain documents were, however, ordered to be produced in case the plaintiff did not amend his plaint. The case was adjourned to 5th April, 1965. The Court below heard the arguments on the application for amendment of the plaint and proceeded to observe that no new ground had been introduced by the plaintiff and that the cause of action remained the same, only some particulars of malice, etc., having been introduced in the pleadings. The Court in the circumstances found no justification for disallowing the amendment.

It is in these circumstances that Rev. G. Harish, Chaplain, Christ Church, Simla, defendant No. 3 in the Court below, has approached this Court on revision challenging the order of amendment. On 25th May, 1965, after hearing the counsel at some length, I considered it necessary to send for the records of the case in order to be able to appreciate the true position. The petitioner's learned counsel has very strongly argued that in this case the stage for requiring further particulars as contemplated by Order VI, Rule 4, Civil Procedure Code, had long since passed and it was at the stage when the plaintiff was leading evidence that the question of the relevancy of some documentary evidence arose. If the plaintiff had not included in his plaint full particulars, then he should not be allowed to fill in the gaps. The defendants did not require any particulars and it was the Court itself which virtually asked the plaintiff to amend the plaint so as to enable the documentary evidence summoned by the plaintiff to be placed on the record, which otherwise could not be so placed. The defendants, it is emphasised, did not want any particulars. Nor did the plaintiff seek amendment of his plaint. In these circumstances, it is argued, there was no occasion for the Court to direct the

Rev. G. Harish Chaplain v. Prem Nath and others

Dua, J.

plaintiff to amend the plaint and adjourn the case for this purpose.

As against this, on behalf of the plaintiff, reliance has been placed on Order VI, Rule 5, Civil Procedure Code, which provides for further and better statement of the nature of the claim or further and better particulars of any matter stated in the pleadings to be ordered. According to the plaintiff's, learned counsel, there was no necessity for amending the plaint in the present case as on the original plaint itself, all the documents summoned by him could legally be brought on the record. The counsel has also tried to justify the amendment in question on the language of Order VI, Rule 17, Civil Procedure Code. Reference has been made by the plaintiff's counsel to the *Municipal Corporation* v. *Lala Pancham, etc.* (1), for the proposition that merely because an amendment is sought by the plaintiffs at the suggestion of the Court, it is not proper o disallow it unless there are grounds for holding that it is forced upon an unwilling party. The Court wanting to do justice, according to this decision, may invite the attention of the parties to defects in pleadings so that they can be emedied and the real issue between the parties tried. My attention has also been drawn to *Kewal Kishore* v. *Hamad Ahmad Khan* (2), in which a plaint was allowed to be amended in a suit by adopted son to set aside a sale effected by father where fact of adoption had not been expressly mentioned in the body of the plaint. The argument of the cousel is that giving of further particulars, even if it be at the stage of evidence, is an amendment which, in the interests of justice, should have been allowed.

I have devoted my earnest attention to the facts of the case and the arguments addressed at the bar. Before proceeding further, I should like at this stage to read Order 6, Rule 17, as amended by this Court:—

> "Rule 17(1) The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose

(1) 1965 S.C. 1008.
(2) A.I.R. 1959 Punj. 181.

Rev. G. Harish Chaplain
v.
Prem Nath and others

Dua, J.

of determining the real question in controversy between the parties.

(2) Every application for amendment shall be in writing and shall state the specific amendments which are sought to be made indicating the words or paragraphs to be added, omitted or substituted in the original pleading."

Sub-rule (2), it may be mentioned, was added on 14th December, 1951. Sub-rule (1) has two portions : the first portion leaves the matter to the discretion of the Court whereas the second portion apparently makes it imperative for the Court to make all such amendments as may be necessary for determining the real matter in controversy between the parties. This duty appears to me to be a rule of conduct as distinguished from a rigid rule of law never to be departed from and is subject to the overriding consideration of preventing injustice and abuse of the process of the Court. This statutory provision confers a very wide discretion in the matter of amendment of pleadings. Though this power may generally call for liberal exercise, the discretion, like all other matters left to a Court's discretion, has to be exercised in accordance with judicial principles, rules of reason, and not arbitrarily or at the whim of the Court in a vague and fanciful manner. Judicial discretion, as the very expression suggests, demands a disciplined and responsible approach, which in truth, represents a compromise between the idea that those who possess power should be trusted with free hand and not tied down by narrow formula, and the competing notion that some contingent control must be retained over them in case they act in an unreasonable way. The Court possessing discretion must use its judgment by putting its mind to the case and not approach the matter with its mind already made.

Turning to the case in hand, it is obvious that it was at the stage of evidence, when the Court was confronted with the admission of some documents, that it directed the plaintiff to amend the plaint in case he wanted those documents to be admitted in evidence and placed on the record. This, in my view, does not reflect a correct and lawful approach on the part of the Court below. Evidence

Rev. G. Harish Chaplain *v.* Prem Nath and others

Dua, J.

is to be admitted if it is relevant to the issue, arising out of the pleadings; and at the stage of evidence, the Court is not, strictly speaking, concerned with the question of amendment of pleadings. If the pleadings and the issues framed thereon do not justify admission of the documentary evidence in question, then the Court in this case was, in my view, transgressing the bounds of its legitimate function in suggesting to the plaintiff to amend the plaint in order to bring the documents within the realm of relevancy and in adjourning the case for that purpose. It is noteworthy that even before me in this Court, the respondents' learned counsel has contended that it is not necessary for him to amend his plaint and that the amendment was applied for in pursuance of the order of the Court below. I would concede that an amendment made in the Court below need not necessarily be disallowed by this Court merely because it was sought by a party at the Court's suggestion, unless it can be said that the same was forced on an unwilling party; and indeed this view is based on the decision of the Supreme Court in the *Municipal Corporation of Greater Bombay* v. *L. Pancham* (1), where that Court did not consider it proper, on special leave appeal, to disallow an amendment sought in the High Court on appeal merely because it had been done on the suggestion of the High Court. The amendment in the reported case was, however, disallowed by the Supreme Court on the ground that a new case of fraud was made out by the amendment for which there was no basis in the plaint as it originally stood.

As observed earlier, Order VI, Rule 17, sub-rule (1), has two portions, the first one being discretionary and the second couched in imperative language. In order to bring a case within the second portion, the amendment must be necessary for determining the real question in controversy between the parties. The real question in controversy appears to me to depend on the facts and circumstances, as disclosed by the pleadings in each case, and it cannot be dreamed up by reference to anything outside the pleadings. The law on the point is apparently well-settled and the principles governing the discretion of the Court have also been stated with clarity in a number of decisions of the Supreme Court and of this Court, to which it is unnecessary on the present occasion to refer. I am inclined to set aside both the impugned orders of the Court below

Rev. G. Harish Chaplain v. Prem Nath and others

Dua, J.

on the ground that the question of amendment of pleadings was erroneously mixed up with the question of production of evidence on 11th March, 1965 and this was an illegality, or, at least, a material irregularity, committed by the Court below in the exercise of its jurisdiction. Without the defendants' seeking any further or better particulars and without the plaintiff praying for amendment of his pleadings, for the Court below to come to the conclusion that the plaint should be amended and on the basis of such amendment specific issue should be framed "in order to reach at a proper decision", and to make the order, the operative part of which has been reproduced earlier, appears to me to be tainted with serious legal infirmity calling for interference on revision by this Court. After this order containing unequivocal opinion of the Court below, the defendants might have felt doubtful if the learned Subordinate Judge would be inclined to take a different view when called upon, later, to pass a formal order on the plaintiff's written application seeking amendment. It is significant that in the application, for amendment under Order VI, Rule 17, Civil Procedure Code, the plaintiff justified the prayer for amendment solely on the ground that the Court had so ordered on his application under Order XI, Rule 14, Civil Procedure Code; and no other ground for seeking the amendment in question at such late stage was contained therein. The order of the Court below, dated 5th April, 1965, formally allowing amendment discloses that the Court's mind had apparently been made up earlier and the matter does not seem to me to have attracted, at that stage, a detached consideration with an open judicial mind on the part of the lower Court, which the rule of law postulates.

Reference by the respondents' counsel to Order VI, Rule 5, of the Code is equally unhelpful. This rule may appropriately be read along with Rule 4 which enjoins a party to give in his pleadings particulars of material facts. Particulars, ordinarily speaking, connote the details of the case set up by a party; and the object of requiring particulars is both to enable the opposite party to know what case he has to meet so that he may not be taken by surprise or feel embarrased on account of obscurity or incompleteness of the case against him at the trial, and to limit the generality of the pleadings so as to define and limit the issues to be tried and avoid unnecessary expense. Where

a party omits to state in the pleadings the requisite particulars or where the particulars stated are insufficient, the contesting party may apply to the Court under Order VI, Rule 5, to secure further and better particulars of the matters stated in the pleadings under Rule 2. Furnishing of sufficient particulars of the material facts is indeed the legitimate due of the opponent; and the Court has, on this view, a duty to see that pleadings are plain, clear and full, so that each side knows the precise nature of the case he has to meet. New material based on a different cause of action may thus not be permitted. And then, though there is no period of limitation for applying for particulars, the party seeking better or further particulars may legitimately be expected to do so within a reasonable time after the necessity arises; undue delay may accordingly, to an extent, go against the applicant. If the party concerned does not consider the necessity of seeking further and better particulars, and both parties go to trial on the existing pleadings containing material facts and the issues framed thereon, can the Court at the time of recording evidence, after declining to admit some evidence as not covered by the pleadings and issues, *suo motu* adjourn the proceedings with a direction or a suggestion to the party whose evidence is excluded to furnish further and better particulars by amending his pleadings to facilitate admission of the excluded evidence ? I entertain some doubt if, ordinarily, in the absence of special circumstances, the trial Court can justifiably adopt such a course; but as the parties before me have not cared to address full and proper arguments on this aspect, I would refrain from expressing any final and considered opinion on the legality of such a course. The Court below too does not seem to have directed its attention adequately to this aspect : nor has it devoted its attention to the requirements of Order VI, Rule 17, with the requisite judicial thoughtfulness. I, however, deem it necessary to observe that it is only fit and proper for the Court below to apply its mind to all the facts and circumstances of the case on the record in order to decide as to what extent the amendment sought can be considered necessary for determining the real question in controversy, and then to apply its judicial discretion in allowing or disallowing the same. Discretion, it must never be forgotten, is seldom absolute; it is usually qualified : it must be exercised in a disciplined manner according to the rules of reason and justice and not according to private will or opinion in a

Rev. G. Harish Chaplain v. Prem Nath and others

Dua, J.

vague and fanciful manner. To repeat, what has been said more than once, the possessor of discretion must put his mind in the case and really use judgment in coming to a decision and must not approach the matter with his mind already made up.

A judicial officer in this Republic, I may permit myself to point out, is expected to exercise his functions in a manner which fulfils the need for discernible judicial objectivity, equality and impartial alertness. He must be able to suspend his judgment until he has systematically, thoroughly and with calm sobriety surveyed and analytically probed all the relevant circumstances of the case and applied his mind to the relevant principles of law meant to guide his judicial thinking. He is enjoined by our jurisprudence to come to the case before him with an open mind avoiding both pre-conceived and extra-judicial caprice, sympathy or prejudice. These qualities seem to me to be essential and indispensable pre-requisites of a judicial officer in this Republic.

In view of the foregoing discussion, I am constrained to set aside both the impugned orders. It would, however, be open to the parties, if so advised, to apply for suitable amendment of pleadings, in accordance with law and the Court below, I have little doubt, would decide the matter exercising its own individual judgment. Nothing said by me in this order should be construed to amount to an expression of opinion on any amendment which may be sought. I have set aside the orders solely on the ground that I am not satisfied on going through them that the Court below has exercised its judicial discretion by applying its mind to the facts and the relevant law. The respondents' learned counsel attempted to argue that there was no necessity for amendment and that the evidence could lawfully be brought on the record on the basis of the original plaint. As the petitioner's counsel had no notice that this contention would be raised by the respondents in reply, he obviously confined himself only to the reasons given by the Court below. Since the lower Court had mixed up these two points, which should in fairness have been kept distinct and dealt with separately, I have set aside both the orders, leaving it open to the Court to consider both the questions on the merits with an open mind uninfluenced by this order, because it is not intended

Rev. G. Harish Chaplain v. Prem Nath and others

Dua, J.

to be an expression of opinion on the merits. The Court should, I may observe, endeavour to avoid giving rise to an apprehension that it intended to act as an adviser to either litigant before it: the Court is an impartial adjudicator under a solemn duty to hold the scales of justice even which should not even appear to be inclined, which is another way of saying that justice must also be clearly seem to be done.

Setting aside the impugned orders, I remit the case back to the Court below for further proceedings in accordance with law and in the light of the observations made above. Parties have been directed to appear in the Court below on 20th September, 1965 when another short date would be given for further proceedings. Since the present litigation unfortunately arises out of poceedings relating to the management of an institution of importance and long standing which is understood to be doing great service to the youth and also to the public at large, it would be desirable that the present unpleasant controversy be disposed of with due despatch and without avoidable delay. There would be no order as to costs in this Court.

R. S.

REVISIONAL CIVIL

Before Shamsher Bahadur, J.

M/s. RAM CHAND & SONS SUGAR MILLS (P) LTD.,—*Petitioner*

versus

KANHAYA LAL BHARGAVA AND ANOTHER,—*Respondents*

Civil Revision No. 289-D of 1965

1965

August, 27th

Code of Civil Procedure (Act V of 1908)—S. 151 and O. 29, R. 3—Suit against a company—Director of the Company ordered to appear in Court to answer material questions relating to the suit—Director not appearing in spite of various opportunities granted—Defence of the Company—Whether can be struck off.

Held, that under Order 29, Rule 3 of the Code of Civil Procedure, 1908, the Court has the power to summon a director of the Company to appear in Court to answer material questions relating to the suit. If the director does not appear, the Court will be justified in striking off the defence of the Company. The Company cannot be heard to say that the director is not under its control and consequently it cannot compel him to obey the order of the Court to appear before it to answer material questions