

# THE DOCTRINE OF RELATION BACK AND AMENDMENTS

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By a Judgment delivered on the 9<sup>th</sup> June 2004 a Division Bench of the Calcutta High Court applying the provisions of Order IV Rule I(3) of the Code of Civil Procedure ( the Code hereinafter) held a plaint to be non est for not complying with the provisions of Order VI Rule 15(4) in that the plaint was not supported by an affidavit. According to the Division Bench the plaint became a plaint and the suit was duly instituted only on the date when upon leave granted the affidavit in support was annexed to the plaint. The Order passed in the suit before the affidavit was annexed to the plaint that is the Order of exparte interim injunction, was set aside only on such a preliminary point urged before the Division Bench in the appeal against the Order of exparte injunction. The Judgment is reported in BHKTIHARI NAYAK VS VIDYAWATI GUPTA, AIR 2005 Cal 145. However, on the 3<sup>rd</sup> February 2006 the Supreme Court reversed the aforesaid decision of the Calcutta High Court. The Judgment of the Supreme Court has been reported in VIDYAWATI GUPTA AND OTHERS VS BHKTI HARI NAYAK AND OTHERS 2006 AIR SCW 813, AIR 2006 SC 1194. Both the provisions that is of Order IV Rule 1(3) and Order VI Rule 15(4) have been incorporated in the Code with effect from 01.07.2002 by the Code of Civil Procedure (Amendment) Act, 1999. Quite apart from the question of binding authority of the law declared by the Supreme Court the Writer was torn between the attractions of the reasonings in these two Judgments for a month during which most of the cases referred to in these two Judgments were perused. A few other decisions were also found instructive. The effort illuminated for the Writer many gray areas in the law of amendments generally and the doctrine of relation back in particular. What follows is an attempt at a survey of the gray areas in the law of amendments with the light gathered from several decided cases relevant to the exercise.

## 1. AMENDMENT, GENERAL

In Black's Law Dictionary Eighth Edition 2004 at page 89 an amendment has been described thus :-

“ A formal revision or addition proposed or made, to a statute, Constitution, pleading, Order or other instruments, specific, a change made by addition, deletion or correction, esp; an alteration in wording.”

In the same volume at page 1191 the phrase “amended pleading” has been described thus :-

“A pleading that replaces an earlier pleading and that contains matters omitted from or not known at the time of the earlier pleading.”

Below the above description Black has quoted an excerpt from Manual of equity pleading and practice by Eugene A. Jones. The excerpt is this :-

“An amendment is the correction of an error or the supplying of an omission in the process or pleadings. An amended pleading differs from a supplemental pleading in that the true function of the latter is to spread upon the record matter material to the issue which has arisen subsequent to the filing of a pleading, while matter of amendment purely is matter that might well have been pleaded at the time of pleading sought to be amended was filed but which through error or inadvertence was omitted or misstated”. (*underlining supplied*).

On analyzing the statements quoted above concentrating on pleading alone three strands are discernible. In the broadest sense any change made in the pleading by addition, deletion or correction especially altering the wording will amount to an amendment. In the strict or narrowest sense any matter material to the issue omitted or misstated through error or inadvertence in the original pleading is the crux of the amendment sought. Any matter arising subsequent to the filing of a pleading constitutes the third strands in the matter of amendment.

### *Statutory Provisions*

1.1. Turning to the statutory provisions in this regard one finds that the above broad scheme has been reflected in the provisions of the Code as well. An amendment in the broadest sense referred to earlier is reflected in the provisions of Section 153 of the Code concerned with the general power to amend. This also is reflected in the provisions of order 1 Rule 10 of the Code dealing with addition, substitution, deletion, transposition and correction of the names of parties as also in assignment, creation or

devolution of interest during pendency of the Suit either by act of parties or by natural causes dealt with under the provisions of Order XXII of the Code. The provision for amendment of the pleading in the strictest sense is contained in Order VI Rule 17 the proviso whereof added since 01.07.2002 takes care of the third strand indicated above. The provision of Order VI Rule 16 of the Code also may qualify as a statutory provision for amendment in the strictest sense. The wide spread tendency to categorize each and every amendment under Order VI, Rule 17 of the Code without keeping the distinctions in focus specially in applying the new provisions like the proviso to Order VI Rule 17 and the provisions of Order IV Rule 1(3) seems to be productive of confusion and uncertainty in the law in this regard. Even when Judges simply mention the word “amendment” in the Judgment the head notes in the law Reports digest the point under the label of Order VI Rule 17 adding to the confusion. One example should be enough. In VIDYAWATI (Supra) the Supreme Court has relied on amongst others AIR 1961 Bombay 292 which liberally uses the word “amendment” at many places but has not once mentioned the provisions of Order VI Rule 17 of the Code anywhere in the Judgment. The first head-note of AIR 1961 Bombay 292 digests the amendment under Order VI Rule 17. Because of the amendment of the law by insertion of the provisions of order IV Rule 1(3) and the proviso to Order VI Rule 17 application of the law has become more hazardous unless the Judge keeps in focus the distinctions referred to above. It is time to try and explore the hazard.

## 2. THE DOCTRINE OF RELATION BACK

To quote BLACK once more the doctrine of relation back means “the doctrine that an act done at a later time is, under certain circumstances treated as though it occurred at an earlier time”. Application of this doctrine to the matter of amendment would simply mean that ordinarily an amendment made to a pleading will relate back to the date when the original pleading was filed. It will be deemed by applying the doctrine that the amendment in the plaint was there on the date of institution of the Suit. Thus in its application it is intimately connected with the question of Limitation of the Suit. The doctrine is not of universal application. It cannot be applied to all manner of amendments irrespective of its true nature. A clear statutory expression of the doctrine in the matter of court-fee can be read in Section 149 of the Code. The doctrine in relation to pleadings needs further analysis and illustration.

### 3. ANALYSIS AND ILLUSTRATIONS OF THE DOCTRINE

#### 3.1. *Addition of Parties*

Addition of new parties, as already indicated constitutes amendment in the broad sense. Statutorily such amendments do not relate back to the date of institution of the Suit. Section 21 of the Limitation Act, 1963 says as much. A cogent summary of the law in this regard can be read in the two concurring Judgments of the Three Judge Bench of the Supreme Court in RAM PRASAD –Vs- VIJAY KUMAR, AIR 1967 S.C. 278. However, there are two exceptions to the Rule that in amendments by addition of parties doctrine of relation back does not apply. Firstly, if a misdescription of a party is corrected by amendment the correction will relate back to the date of institution of the Suit. See PURUSHOTTAM UMED BHAI AND Co. Vs M/S MANILAL AND SONS AIR 1961 S.C. 325 where the Supreme Court placed such a correction as an amendment squarely under Section 153 of the Code and not under Order 1 Rule 10 and only said such an amendment could be permitted “possibly under Order VI Rule 17 about which we say nothing”. Secondly the proviso to sub-section 1 of Section 21 of the Limitation Act, 1963 makes it possible in a case covered by the proviso for the Court to mitigate the rigour of the rule against application of the Doctrine of relation back in cases of addition of parties.

Sub-section (2) of Section 21 makes it abundantly clear that substitution or addition of parties by assignment or devolution of interest during pendency will be governed by the doctrine of relation back.

As hinted in PURUSHOTTAM (Supra) amendments relatable purely to addition, substitution of parties, be it under Order 1 Rule 10 or under Order XXII really do not amount to amendments within Order VI Rule 17 but attract the general power of amendment provided in Section 153 of the Code in that these amount to removal of a defect error or omission in the proceeding. Incidentally JAI JAI RAM MANOHAR LAL - Vs- NATIONAL BUILDING MATERIAL SUPPLY, AIR 1969 S.C. 1265 is another decision of the Supreme Court reiterating the same statement of law. In KURAPATI VENKATA MALLAYYA AND ANOTHER –Vs- THONDEPU RAMASWAMI AND CO., AIR 1964 S.C. 818 a Four Judge Bench of the Supreme Court dealt with a suit dismissed as barred by limitation because the original cause title of the suit showing as having been filed by the Receiver in his own name was later amended to read “THONDEU RAMSWAMI AND CO. represented by the Receiver on a date beyond the three years limitation of the Suit. Agreeing with the High Court, the Supreme Court again held that misdescription can be amended at any time and the question of limitation does not arise. Thus the doctrine of relation back was applied. Incidentally though in the

body of the Judgment the words “amendment of the plaint” have only been mentioned the head note digested this under Order VI Rule 17.

In BAL NIKETAN NURSERY SCHOOLS -Vs- KESARI PRASAD, AIR 1987 S.C. 1970 the Supreme Court while directing amendment of the plaint to add a party provisions of Order 1 Rule 10 only were mentioned.

### 3.2. *Addition of Properties*

Different shades of alteration in the properties involved in the suit also will amount to amendment in the broadest sense. Alteration may be by correcting a mis-description. Like correcting a misdescription of parties such an alteration essentially will be under Section 153 of the Code and will relate back to the date of institution of the Suit containing the mis-description.

Another variety of alteration may be by addition of more properties. Yet another variety may be wholesale substitution of properties. All or any of these may be coupled with or bereft of any alteration in the material facts in the original pleading. Any of these again may fall within or outside the proviso to Order VI Rule 17 of the Code.

As long ago as on the 10<sup>th</sup> of March, 1918 a Division Bench of the Calcutta High Court dealt with the point considered in this section in MANINDRA CHANDRA NANDI BAHADUR -Vs- RANGALAL MANDAL AND OTHERS, AIR 1918 Calcutta 443. There in a suit filed on the 16<sup>th</sup> August, 1911 seeking leave to amend the schedule to the plaint from the original 9 plots of land with an area of 9 Bighas valued @Rs.305 to 59 plots of an area of 69 Bighas valued @Rs.705. The “so called amendment” was granted on the 29<sup>th</sup> of August 1911.

The first question pinpointed was whether the so called amended plaint includes or not lands set out in the schedule of the unamended plaint. The Judgment then proceeds thus :-

“The next point which we consider is as regards such lands as were added on 16<sup>th</sup> of August 1911 and were not included in the original plaint. The question which arises as regards such lands is, when was the suit instituted as regards them. For the respondent it is contended that the suit was instituted as regards all lands on 3<sup>rd</sup> of March, 1911 when the plaint was received. It might be so if it were a case of amendment proper; but it is not so, because this is not a case of amendment properly so called but a case of addition of entirely new lands, and, therefore as regards such new lands will be taken will date from the

date when the claim was made in respect thereof, namely on 16<sup>th</sup> August 1911.”

The Judgment is of seminal significance on two counts. Firstly, by describing the amendment sought in the schedule of properties by using words such as “what was called an amendment,” “so called amendment” (twice), “amendment proper” and “amendment properly so called” it was clearly implied that the changes in the schedule is not an amendment within Order VI Rule 17 if not coupled with alteration in the material facts originally pleaded. Secondly the doctrine of relation back applied only to proper that is amendments in the strictest sense involving change in the material facts and not to pure addition of new properties.

### *3.3. Correcting the Omission or error in signings and/or verification of pleadings*

On this score the matter of amendment simmered from the late nineteenth century till mid twentieth century. Some of the High Courts were of the view that if the signing and/or the verification is defective or totally absent the pleading is not a pleading. Pleading becomes a pleading only when the defect is removed. The correction does not relate back to the date of institution of the suit in case of a plaint. Another group of High Courts were of the view that the correction can be made at any time even after the period of limitation of the suit and the doctrine of relation back will apply. The latter group of High Courts drew support from the Privy Council decision. MOHINI MOHUN DAS AND OTHERS Vs BUNGSU BUDDAN SAHA DAS AND OTHERS, ILR 17 Cal 580 decided on the 19<sup>th</sup> November, 1889. The suits to recover moneys alleged to be due to Mohini Mohun, Gobind Rani and Khetter Mohun jointly were filed on the 2<sup>nd</sup> November, 1883. In both the Courts below the suits were held to have been originally defective for want of parties, and to have been barred by the law of limitation before the defect was cured. The alleged defect of parties centred round the fact that though the cause title named all the three above named as plaintiffs only Mohini Mohun signed and verified the plaint and that as regards Khetter Mohun, Mohini Mohun applied for permission to sue on his behalf under Section 30 of the 1882 Code and permission was granted only on the 8<sup>th</sup> January, 1884. The Privy Council impressed by the fact that all the three persons were shown as plaintiffs on the face of the plaint, the names of Gobind Rani and Khetter Mahun have not been struck out, nor did they, or either of them, attempt to repudiate the suits held :-

“ There is no rule providing that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint.”

With regard to the order dated 8<sup>th</sup> January, 1884 it was further held :-

“The orders were merely waste paper. These various experiments or blunders cannot, in their Lordship’s Opinion, affect the real position of the parties, which is plain on the face of the records. The question, as Mr. Doyne put it, is simply this :- when was it that Khetter Mohun became a party to these suits? If it was on the 2<sup>nd</sup> of November, 1883, the suits were in time. If it was not till the 8<sup>th</sup> of January, 1884, they were too late. Their Lordship think that Khetter Mohun, as well as Gobind Rani, become party, as plaintiff, on the 2<sup>nd</sup> November, 1883 and the suits therefore are not barred by lapse of time.”

The former view that a plaint became a plaint only from the date of the correction in signing and verification can be read in AIR 1922 Bombay 113 where the defect related to improper signing of the plaint. A new addition after 01.07.2002 is the requirement of an affidavit by the person verifying the pleading under the provision of Order VI Rule 15(4) of the Code. Indeed in VIDYAWATI (Supra) before the Division Bench of the Calcutta High Court several judgments were cited including AIR 1927 Cal 376 and AIR 1948 Mad 369 supporting the view that the defect in signing and verification of a pleading is a mere irregularity and can be corrected at any stage and the correction will relate back to the date of institution of the Suit. All the decision including the above two cited were not accepted as applicable because of the provisions of Order IV Rule 1(3) operative since 01.07.2002. The Division bench interpreted Order IV Rule 1(3) as a statutory bar against application of the doctrine of relation back. On the other hand the Supreme Court in VIDYAWATI (Supra) held that AIR 1927 Cal 376, AIR 1948 Mad 369 and AIR 1961 Bombay 292 highlighting “the consistent view of the three chartered High Courts” is still the correct law and that Order IV Rule 1(3) being procedural in nature cannot affect the law in this regard. Doctrine of relation back will still apply. Unfortunately neither before the Division Bench of the Calcutta High Court nor before the Supreme Court any attempt was made to argue the point on the basis of the basic principles of law involved. The decision of the Supreme Court in VIDYAWATI (Supra) can be supported on firmer ground than the ground of Order IV Rule 1(3) being procedural alone. In the next section this will be attempted.

### 3.4. *Error, accidental slip, typographical error*

This part can be best illustrated by what happened in a recent case dealt with by the Gauhati High Court in JAGANABALKYA CHAKRABORTY Vs BIDYARTHI CHAKRABORTY, 2006(1) GLT 560 decided on the 10<sup>th</sup> February, 2006. An obvious typographical error in the date of execution of a Will sought to be corrected to read 16.04.1997 instead of 22.05.1982 was refused by the trial court acting under the newly added proviso to Order VI Rule 17 of the Code since the correction was sought after the trial has commenced. The High Court allowed the proposed correction. However, the High Court was persuaded to read a head on clash between the provision of Section 153 and that of Order VI Rule 17 as amended and to harmonize the two provisions by resort to several Supreme Court Judgments dealing with principles of harmonious construction of statutory provisions. In this essay the wide spread tendency to label every amendment as one under Order VI Rule 17 without keeping in focus the distinctions indicated has already been referred to. This case is an illustration of that tendency. If the learned counsels have argued the matter on basic principles of amendment there would have been no occasion to read a clash between the provision of Section 153 and Order VI Rule 17 of the Code. One can visualize the provisions as containing within two concentric circles the larger one comprising Section 153 and within it the smaller one comprising the provisions of Order VI Rule 17 of the Code. The word “proceeding” in Section 153 of the Code includes pleading as well. At page 1241 of BLACK’S LAW DICTIONARY, Eight Edition 2004 a whole gamut of meaning of the word proceeding has been mentioned and an excerpt from the Law of pleading under the Codes of Civil Procedure by Edwin E. Bryant has been quoted. The excerpt mention thirteen item in the inclusive description of the word “proceeding” and at item four is “pleading”. Indeed Justice C.K. Thakker of the Supreme Court in his book on “Code of Civil Procedure 1908” appears to have digested all the above by observing at page 975 of Vol 2 of the book thus :

“The phrase would take within its sweep a  
 plaint, Written Statement, notice of motion,  
 memorandum of appeal, application for  
 execution or for restitution, etc.”

Above all way back in 1961 the Supreme Court in PURUSHOTTAM (Supra) impliedly indicated the distinction between the provisions of Section 153 of the Code and those of Order VI Rule 17. It is specifically for correction of “defect or error” like in the Gauhati Case Section 153 of the Code was enacted. There may also be obvious grammatical errors in a sentence in a pleading. Such errors would not be within the restriction

of the proviso to Order VI Rule 17 because these errors will be covered by Section 153 of the Code. Defects or errors within Section 153 of the Code when corrected be it within or without limitation will relate back to the date of institution of the Suit.

#### 4. SIGNING AND VERIFICATION OF PLEADING - PRINCIPLES

Even a cursory reading of the provisions of Order VI Rule 14 and 15 should tell anyone that signing and verification of pleading are not part of the pleading. The language of the said provisions such as “pleading shall be signed”, “pleading shall be verified” and of the new provision “an affidavit in support of the pleading” sets the pleading and the signature, the verification and the affidavit apart. What Black has described as a amendment purely and Sir John Woodroffe has described as “so called amendment” “amendment proper” etc. are relatable to only what is provided in Rule 2 to 13 of Order VI either negatively or positively. Indeed a Division Bench of Allahabad High Court has in SHIBDEO MISHRA Vs RAM PRASAD, AIR 1925 ALL 79 dealing with a case of total absence of and not a mere defect in verification observed thus :-

“In our opinion the omission to verify it was a mere irregularity which could be cured even at a later stage. Merely on the ground of such a defect, the plaint cannot be treated as altogether invalid. The subsequent verification was not an amendment of it. (underlining supplied.)”

That apart signing, verification and the affidavit add no averments to the pleading raise no issues and the purpose of all the three is to show the good faith of the party signing, verifying and filing the affidavit in support. Since any alteration, correction in any or all of the three involves a change in the pleading such alterations have to be categorized not under the provisions of Order VI Rule 17 but under the general provisions of Section 153 of the Code, which do not attract the proviso under Order VI Rule 17.

To that extent law regarding the correcting a defect or omission in any of the above three has remained unchanged even after 01.07.2002. The doctrine of relation back will apply as before.

The next question is has the new provisions of Order IV Rule 1(3) affected the law after 01.07.2002. To answer that it will be necessary to comprehend the meaning of the words “duly instituted”. Sub-rule (3) of Rule 1 in Order IV added since 01.07.2002 by Act 46 of 1999 reads thus :-

“The plaint shall not be deemed to be duly instituted unless it complies with the requirements of Sub-Rule (1) and (2).”

The above is a legal fiction in the negative form which is rare. It is trite to say that in interpreting a legal fiction the first step is to ascertain the purpose of the legal fiction and then to give effect strictly to that purpose without expanding its legitimate field. STATE OF TRAVANCORE, AIR 1953 SC 333, BENGAL IMMUNITY COMPANY, AIR 1955, S.C. 661 say as much. Even EAST END DWELLINGS, 1952 AC 109 relied on by the Division Bench of the Calcutta High Court in VIDYAWATI (Supra) holds similarly. As regards the use of the word “deemed” in modern legislation the following passage from ST. AUBYN Vs ATTORNEY GENERAL (1951)2 ALL ER 473 quoted in several Supreme Court decisions is of utmost significance. The passage reads thus :-

“The word “deemed” is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.”

The Code as it existed before 01.07.2002 also contained the words “duly instituted” in Section 27 and in Order V, Rule 1 but without any definition of the phrase anywhere. The statement of object and reasons in clause 14 says amongst others the following :

“.....Sub-Rule (2) of Rule 1 of the said Order requires compliance of certain formalities by the registry of Court. With a view to dispel the doubts when a suit is regarded to have been instituted, clause 14 inserts a new sub-rule (3) to provide that the plaint shall not be deemed to be duly instituted unless it complies with requirements specified in Sub-Rule (1) and (2)”.

From the above there seems to be no question of any doubt that it is only for the second of the three uses mentioned in ST. AUBYN (Supra) the legal fiction in Order IV Rule 1(3) has been enacted. The most common use of the legal fiction that is imagining the fictional as the real

cannot operate here but unfortunately the Division Bench of the Calcutta High Court in VIDYAWATI (Supra) stuck to that use only. The “certain formalities by the registry of the Court” compliance of which is the requirements of sub-Rule (2) according to the Objects and Reasons of the new provision can be found in Civil Rules and Orders issued by High Courts. As far as Calcutta and Gauhati High Court are concerned the check list for the Registry contains 10 items and item (1) (II) (III) respectively pinpoints payment of full Court-fee, proper signing and verification and compliance of Rule 1 to 8 of Order VII of the Code. Plaints presented to the registry on being received must be registered that is entered into the Register of Suits. The date stamped on the plaint on presentation is the date of registration of the suit for the purpose of Section 3 of the Limitation Act. On presentation and receipt the registry also has to undertake the checking. If on checking any defect or defficiency say in verification signing, court-fee is found only consequence is that the suit will not be duly instituted and therefore summons may not be issued. Even before 01.07.2002 no court issued summons to the defendant in a suit registered on a plaint with deficit court-fee. What was done in practice by the Courts before 01.07.2002 upon the registry pointing out any defect on checking the plaint has been given a statutory support by the new provision in Order IV Rule 1(3) and nothing more. Thus the provision is not a statutory bar on the application of the doctrine of relation back. Recently (the 7<sup>th</sup> of March, 2006) the Supreme Court in BOMBAY DYEING, 2006 AIR SCW 1392 spoke thus :-

“It is well settled principle of law that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the latter as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning .....” (*underlining supplied*)

The meaning carried by the words “duly instituted” contained in Section 27 and Order V Rule 1 before the amendment of 1999 has already been explored. That should be the meaning given to the words “duly instituted” in Order IV Rule 1(3). Indeed in AIR 1922 Cal 234 The words “duly instituted” have been similarly explained. Unfortunately such arguments were not made before the Division Bench of the Calcutta High Court in VIDYAWATI (Supra). The error in the judgment has eventually been set right by the Supreme Court though not on the grounds explored here.

## 5. THREE DECISIONS OF THE SUPREME COURT ON THE DOCTRINE OF RELATION BACK

5.1. VISHWAM BHAR Vs LAKMINARAYANA , AIR 2001 S.C. 2607, (2001) 6 SCC 163 decided by the Supreme Court on the 20<sup>th</sup> July 2001 arose out of a suit by two sons against purchasers in possession of lands by virtue of sale deeds executed by their widowed mother during their minority without legal necessity and without permission under Section 8 of the Hindu Minority and Guardianship Act, 1956. Apart from the two purchasers, the mother and four sisters were impleaded as defendants. The plaintiff No.1 Vishwambhar attained majority on 20<sup>th</sup> July, 1978, the plaintiff No.2 Digambar attained majority on the 5<sup>th</sup> of August 1975 and the suit was filed on the 30<sup>th</sup> of November, 1980. Article 60 of the Limitation Act lays down the period of limitation for setting aside such sale as three years from the date of attaining majority. Digambar's Suit therefore, was barred by Limitation . Basis of the suit originally was that the sale by the mother was void ab initio. Later on in December, 1985 by an amendment the prayer to declare the sale deeds as invalid and inoperative and to set them aside was added. The trial court applied the doctrine of relation back and decreed the suit of Vishambhar as if such a prayer was there on the date of institution of the suit. The first and the second appellate court refused to apply the doctrine and the dismissed the suit of Vishambhar as well. The Supreme Court observed thus :-

“The basis of the suit before amendment was that sales were void ab initio and are liable to be ignored. After amendment the basis is altered to say that sales are voidable and as such seeking setting aside. In such circumstances the suit for setting aside the transfer could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that.....”

5.2. SIDDALINGAMMA AND ANOTHER Vs MAMTHA SHENOY, AIR 2001 S.C. 2896, (2001)8 SCC 561 decided by a Three Judge Bench of the Supreme Court on the 18<sup>th</sup> of October, 2001 arose out of a petition for eviction on the ground of bonafide requirement under the Karnataka Rent Control Act. The landlord having died during pendency the bonafide requirement of the widow of the landlord was inserted as a ground of eviction through an amendment. The petition succeeded before the trial Court but the High Court reversed the decision. The Supreme Court spoke thus :-

“Even the High Court in its impugned Order has not found fault with the Order of the trial court

permitting the amendment nor has it expressed an opinion that leave granted by the trial court for amendment in the eviction petition suffered from any error of jurisdiction or discretion. On the doctrine of relation back, which generally governs amendments of pleadings unless for reasons the Court excludes the applicability of the doctrine in a given case the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition. (Underlining supplied.)

5.3. Cogent reasons for non application the doctrine of relation back and a few other salient aspects of the principles governing amendment of pleadings can be read in SAMPATH KUMAR Vs AYYAKANNU AND ANOTHER, AIR 2002 S.C. 3369, (2002) 7 SCC 559 decided by the Supreme Court on the 13th September 2002. Brief of the facts is the following. The plaintiff filed the suit in 1988 for perpetual injunction alleging possession over the suitland. The defendant pleaded that on the date of institution of the Suit he was in possession and sought dismissal of the Suit. In 1999 before the trial commenced the plaintiff moved an application under Order VI Rule 17 of the Code alleging that in January, 1989 the defendant forcibly dispossessed him. On such averment the plaintiff sought the relief of declaration of title and consequential relief of recovery of possession on payment of the requisite court-fee. Trial Court refused the amendment observing that appropriate course for the plaintiff is to file a fresh suit. The High Court agreed with the view of the Trial Court.

The question before the Supreme Court was “whether it is permissible to convert through amendment a suit merely for permanent injunction into a suit for declaration of title and recovery of possession.”

In answering the above question the Supreme Court observed :-

Firstly, since “the basic structure of the suit is not altered by the proposed amendment and only the nature of relief is sought to be changed allowing the amendment would curtail multiplicity of legal proceedings.

Secondly, the question of delay in seeking the amendment, in the case almost 11 years after the date of the suit, should be decided not by calculating the period from the date of the suit alone but by reference to the stage of the suit. Pre-trial amendments are allowed more liberally than those sought to be made after commencement or conclusion of trial. In the latter case question of prejudice to the

opposite party may arise and has to be answered by reference to facts and circumstances of each case. Mere delay cannot be a ground for refusing a prayer for amendment.

Thirdly, the merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment.

Fourthly, an amendment once incorporated relates back to the date of 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 the amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and that it shall operate from the date of filing of the application for amendment.

Fifthly, since the defendant allegedly has perfected his title his right should not be allowed to be defeated by permitting the new relief to relate back to the date of the suit which would amount to excluding a period of about 11 years in calculating the period of prescriptive title.

Thus to avoid multiplicity of legal proceedings as well as to avoid prejudice to the defendant the relief of declaration of title and recovery of possession was allowed to be inserted by amendment operative only from the date of the application for amendment.

5.4. Both VISHWAMBHR (Supra) and SAMPATH KUMAR (Supra) are primarily cases dealing with amendment of the relief sought in the respective suits. The difference is that while relief sought to be inserted in the former case was without any alteration in the material facts the amended relief in the latter case was accompanied by alteration of the material facts. In para 10 of the judgment in VISHWAMBHAR (Supra) one can read the following –

“From the averments of the plaint, it cannot be said that all the necessary averments for setting aside the sale-deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale-deed was a mere formality.”

The hint is clear enough to indicate that addition of further or proper relief flowing from the existing pleadings may amount to correction of an error, defect within Section 153 of the Code. In such a case doctrine of relation back will apply.