

PETITIONER:
HANAMANTHAPPA & ANR.

Vs.

RESPONDENT:
CHANDRASHEKHARAPPA & ORS.

DATE OF JUDGMENT: 03/02/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

THE 3RD DAY OF FEBRUARY, 1997

Present:

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice G.T. Nanavati

S.K. Kulkarni, Adv. for Ms. Sangeeta Kumar, Adv. for the appellants

O R D E R

The following Order of the Court was delivered:

O R D E R

This Special Leave Petition arises from the judgment of the Karnataka High Court, made in C.R.P. No.1650/96 on July 9, 1996.

Admittedly, the respondents filed O.S.No.158/94 in the Court of District Munsiff, Navalagund. On grounds of lack of territorial jurisdiction the plaint was returned for presentation to the proper court. Accordingly, after making necessary amendment to the plaint the respondents represented the suit, which came to be numbered as O.S. No.10/91, in Civil Court at Dharwad. The petitioners filed an application under Order VII, Rule 10, CPC for dismissal of the petition on the ground that the plaint was materially altered, without seeking permission for amendment of the plaint as required under Order VI rule 17, CPC. The High Court dismissed the petition.

It is contended by Shri Kulkarni, learned counsel for the petitioners, that since the petition had been filed with amended averments in the plaint, necessarily it must be treated to be a fresh plaint and not one after representation to the proper court. We find no force in the contention. The object of Order VII, Rule 10-A is that the plaintiff, on return of the plaint, can either challenge in an appellate forum or represent to the court having territorial jurisdiction to entertain the suit. In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the court fee as had rightly been pointed out by the High Court. Therefore, it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the court of District Munsiff, Navalagund. It is not always necessary for the

plaintiff to seek amendment of the plaint under Order VI, Rule 17, CPC. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. Under those circumstances, we do not think that there is any error of law committed by the High Court in giving the above direction.

The special leave petition is accordingly dismissed.

JUDIS