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HANAMANTHAPPA AND ANR.
v.
CHANDRASHEKHARAPPA AND ORS.

FEBRUARY 3, 1997

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[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Code of Civil Procedure, 1908 :

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Order VII Rule 10-A, Order VI Rule 17—Plaint filed—Lack of territorial jurisdiction—Plaint returned for presentation to the proper Court—Filed in the proper court with amendments—Plea that the plaint was materially altered without permission for amendment—Petition dismissed by High Court—On appeal held, suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of court fee—Hence it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint—It is not always necessary for the plaintiff to seek amendment of the plaint—At best it could be treated to be a fresh plaint and the matter could be proceeded with according to law.

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 1535 of 1997.

From the Judgment and Order dated 5.9.96 of the Karnataka High Court in C.R.P. No. 1650 of 1996.

S.K. Kulkarni for Ms. Sangeeta Kumar for the Appellants.

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The following Order of the Court was delivered :

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.

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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

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was materially altered, without seeking permission for amendment of the
plaint as required under Order VI Rule 17, CPC. The High Court dis-
missed 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.

G.N.

Petition dismissed.