
(1967) 09 MAD CK 0013
In the Madras High Court

C.D. Dhanaraj and Another		APPELLANT
	Vs	
S. Nami Stella Sarojini and Others		RESPONDENT

Date of Decision : 27-09-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 7, 115
Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 3(4)

Citation : (1968) 81 LW 15 : (1968) 1 MLJ 390

Hon'ble Judges : K.S. Venkataraman, J

Bench : Division Bench

Judgement

K.S. Venkataraman, J.—The revision petitions are connected and hence they are being disposed of together. The petitioners are the

defendants in the suit O.S. No. 16 of 1963 on the file of the Subordinate Judge's Court, Tuticorin. The suit was filed by the four plaintiffs claiming

an one-fourth share of the properties listed out in the four schedules to the plaint. The parties are Christians governed by the Indian Succession

Act, 1925. The plaintiffs alleged that the properties belonged to their materna-grandfather, Gnana Doraiswami Nadar, who died intestate on 9th

March, 1955. Their mother's mother Ratnamani Sellammal was the first wife of Gnana Doraiswami Nadar. The three defendants" are the sons of

Gnana Doraiswami Nadar by his second wife Gnana Siromani Ammal. Ratnamani Sellammal, the first wife died during the lifetime of Gnana

Doraiswami Nadar and the second wife died shortly after his death in November, 1955. The heading of the properties in Schedule II was

Properties of Gnana Doraiswami Nadar in the name of Gnana Siromani Ammal. The plaint further alleged in para. 6, that, besides the properties

mentioned in the four schedules, Gnana Doraiswami Nadar owed other properties

which the defendants ""have to be directed to disclose.

2. The first defendant filed a written statement which was adopted by defendants 2 and 3. Their main defence was that the plaintiff's grandmother

had received some properties from Gnana Doraiswami Nadar in full settlement of her claims, that consequently the plaintiffs were not entitled to

any share and that their share, if any, could only be the one-sixth. We are not now concerned with these defences. We are now only concerned

with the answer to paragraph 6 of the plaint which is contained in paragraphs 4 and 12 of the written statement. In paragraph 4 the defendants

stated that the third schedule properties were the exclusive properties of the mother of the defendant, Gnana Siromani Ammal, and that the

plaintiffs were not entitled to any share in them. In paragraph 12 it was stated:

There are no other properties belonging to the family except whatever is set forth in the Schedules I, II and IV, schedule III being properties which

belong to the mother of the defendants in her own right.

3. Thus the definite admission of the defendants was that the properties set forth in schedules I, II and IV belonged to Gnana Doraiswami Nadar.

But, after several adjournments, they filed the two applications out of which these revisions arise (I.A. Nos. 180 and 181 of 1966) to amend the

written statement and to receive an additional written statement. The affidavits filed in support of the applications are to the effect that they were all

employed in Government service in distant places and had no real knowledge of the relevant documents and papers relating to the properties. They

were under the impression that the plaintiff's claim was untenable and that the plaintiffs would compromise the suit and that is why they did not take

much care in filing the original written statement. But, when they realised that they had to go to trial, they searched the papers again in order to

prove their title to the third schedule properties, and in the course of such search they found certain documents mixed up with old papers showing

that not only the properties listed in the third schedule, but certain other items also, not belonging to Gnana Doraiswami Nadar had been included

in the plaint as belonging to Gnana Doraiswami Nadar. In particular, item No. 2 of plaint first schedule, and items 1 and 2 of plaint fourth schedule

also belonged to the defendant's mother Gnana Siromani Ammal. She had purchased them with her own moneys, paid tax and enjoyed them

during her lifetime, and they were subsequently enjoyed by the defendants as their mother's properties. The particulars are to be found in

paragraph 4 of the additional written statement sought to be filed.

4. It was then alleged in paragraph 5 of the additional written statement:

Further in item No. 18 of Schedule II, extent is 10 cents belongs to this defendant (2nd defendant) he having purchased it with his earnings. As

such the plaintiffs cannot claim any share in this item.

5. The extent given in the plaint schedule for this item is 67 cents.

6. The prayer in I.A. No. 180 of 1966 was to delete from paragraph 12 of the written statement the words ""except whatever is set forth in

Schedules I, II and IV, schedule III being properties which belonged to the mother of the defendants in. her own right."" The prayer in I.A. No.

181 of 1966 was to receive the additional written statement.

7. These applications were opposed by the plaintiffs. The learned Subordinate Judge by a common order dated 11th August, 1966 dismissed both

the applications. After quoting Order 6, Rules 7 and 17, Civil Procedure Code, he observed:

Apart from the question of enormous delay on which ground alone it cannot be said that the petitions could be dismissed, it is evident that the

proposed amendments of the written statement of the first defendant and the additional written statement sought to be filed go back upon the

admitted position that the properties described in the Schedules I, II and IV belonged to the family and hence were liable for partition. A new case

is thereby sprung upon the plaintiffs, for the first time and there is nothing to show that the facts set up were not within the knowledge of the

defendants or could not have been ascertained by them earlier. So the Court will be justified in rejecting these petitions.

8. C.R.P. No. 1916 has been filed in respect of I.A. No. 180 of 1966 and C.R.P. No. 383 of 1967 has been filed in respect of I.A. No. 181 of

1966.

9. In my opinion, the learned Subordinate Judge did not sufficiently appreciate the circumstances set out in the affidavits of the defendants, nor am I

sure that he kept in View the principles bearing on the question of allowing amendments. The result Was that he failed to exercise the jurisdiction

vested in him to permit the amendments and did not proceed to consider the further question as to how far the amendments could be allowed.

Under these circumstances, it is the duty of this Court to interfere in revision u/s 115 (b)s Civil Procedure Code.

10. In L.A. Subramania Iyer Vs. R.H. Hitchcock, , a Bench decision of this Court, there is a detailed discussion of the principles which should

govern the disposal of an application for amendment of a written statement raising a plea inconsistent with an earlier admission in the original written

statement. It is pointed out that the earlier admission might have been made by mistake and that in such case the Court should be liberal in allowing

the amendment. But, where there is reason to think that the earlier admission might have been made by mistake and that in such case the Court

should be liberal in allowing the amendment. But, where there is reason to think that the earlier admission was not made by mistake and that the

defendant deliberately changes his mind later, he should not be allowed to amend. Dharmalinga Chetti Vs. A.M. Krishnaswami Chetty, , K.E.M.

Muhammad Ibrahim Maricar and Others Vs. O.S.M. Ahmed Marica, , Muthuswami Raja Vs. Ramu Ammal, , are cases in which amendments

inconsistent with previous admissions were allowed.

11. So far as the facts in this case are concerned, there is nothing inherently improbable in the circumstances alleged in the affidavits of the

defendants, so far as the properties, which are set forth as belonging to Gnana Siromani Ammal in addition to the third schedule properties are

concerned. It must be remembered that after all, we are only at the stage of permitting an amendment, and still at the trial the defendants will have

to substantiate their claim and naturally they would be asked at the trial to explain their earlier admission. But the amendment regarding item 18 of

Schedule II stands on a different footing. If, as is now alleged, the second defendant had purchased a portion of the ten cents with his earnings, it is

a fact which he could not have forgotten when he filed the original written statement. Accordingly that amendment cannot be permitted.

12. There is also another point that, except in respect of the plaintiff first schedule item 2, second schedule, item 2, fourth schedule, items 1 and 2

and the third schedule which are said to belong to the defendant's mother, Gnana Siromani Ammal, the defendants must be pinned down to their

admissions in the original written statement that the other properties belonged to Gnana Doraiswami Nadar. I mention this, because in paragraph 2

of the additional Written statement there is an attempt to put the plaintiffs to proof of the title of Gnana Doraiswami Nadar in respect of each and

every item of the plaint schedule properties. That attempt cannot be permitted. Paragraph 2 of the additional written statement runs thus:

The averments in para. 6 of the plaint are incorrect and made by the plaintiff without regard for truth and facts. The defendants do not admit that

the entire plaint schedule mentioned properties belonged to G.D. Nadar and plaintiffs are put to strict proof that G.D. Nadar had absolute right

over each and every item of the plaint schedule properties and to prove the correctness of the extent.

13. The portion ""the plaintiffs are put to strict proof that G.D. Nadar had absolute right over each and every item of plaint schedule properties and

to prove the correctness of the extent"" must be deleted.,

14. In Dharmalinga Chetti Vs. A.M. Krishnaswami Chetty, Panchapakesa Aiyar, J. interfered u/s 115(c), Civil Procedure Code. But in

Muthuswami Raja Vs. Ramu Ammal, , Subramaniam, J., interfered u/s 115(c) on the ground that the learned Subordinate Judge had acted with

material irregularity in the Exercise of his jurisdiction in refusing to allow the amendment prayed for. In K.E.M. Muhammad Ibrahim Maricar and

Others Vs. O.S.M. Ahmed Marica, , (a decision of Rajagopalan, J.) it is not stated whether Clause (b) or Clause (c) Was applied. It seems to me

that in this state of the rulings it is desirable for me to give my reasons for holding that a case like the present caste comes under Clause (c) and not

under Clause (c) of Section 115. Section 115, Civil Procedure Code, runs:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal

lies thereto and if such subordinate Court appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a

jurisdiction so vested or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

15. There are numerous decisions on the question, as can be gathered from the Commentaries of Mulla and the A.I.R., but it is sufficient to

mention the following decisions of the Privy Council and the Supreme Court. Raja

Amir Hasan Khan v Sheo Bags Singh ILR (1885) Cal. 6 : 11

I.A. 237, Balakrishna Udayar v. Vasudeva Aiyar L.R. (1967) 44 IndAp 261 : 33
M.L.J. 69 : ILR 40 Mad. 793 : 6 L.W. 501, AIR 1949 156

(Privy Council) , AIR 1949 239 (Privy Council) , Keshardeo Chamria Vs. Radha
Kissen Chamria and Others, , and also D.S. Chellammal Anni

Vs. Nasanan Samban, .

16. In the two decisions first mentioned their Lordships point out that, so long as
the Subordinate Court has jurisdiction to decide the question the

mere fact that the Court decided the case wrongly either in law or in fact, will not
by itself amount to acting illegally or with material irregularity. In

AIR 1949 156 (Privy Council) their Lordships observed:

Section 115 applies only to cases in which no appeal lies, and where the
Legislature has provided no right of appeal, the manifest intention is that

the order of the Court, right or wrong, shall be final. The section empowers the
High Court to satisfy itself upon three matters (a) that the order of

the Subordinate Court is within its jurisdiction (b) that the case is one in which
the Court ought to exercise jurisdiction (c) that in exercising

jurisdiction the Court has not acted illegally, that is, in breach of some provisions
of law, or With material irregularity, that is by committing some

error of procedure in the course of the trial which is material in that it may have
affected the ultimate decision : If the High Court is satisfied upon

these three matters, it has power to interfere, because it differs, however,
profoundly, from the conclusions of the Subordinate Court upon

questions of fact or law.

(The italics is mine).

It will be seen that their Lordships construe material irregularity as committing
some error of procedure in the course of the trial which is material in

that it may have affected the ultimate decision.

17. In AIR 1949 239 (Privy Council) their Lordships point out that though a
Subordinate Court might not have acted illegally or with material

irregularity so as to justify interference in revision under Sub-section (c),
nevertheless, if the erroneous decision results in the Subordinate Court

exercising a jurisdiction not Vested in it by law, or failing to exercise a jurisdiction
so vested, a case for revision arises under Sub-section (a) or

Sub-section (b) and Sub-section (c) can be ignored. That was a case where the Subordinate Court dismissed the application of the defendants

filed for scaling down a debt under the provisions of the Bengal Moneylenders Act, holding that the loan in question was a commercial loan, and,

therefore the Act did not apply. The High Court held that the loan was not a commercial loan and interfered in revision u/s 115(b). That was

confirmed by their Lordships of the Privy Council. The relevant passage in the above decision of the Privy Council has been quoted with

approval by their Lordships of the Supreme Court in *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , and their Lordships further

add:

Reference may also be made to the observations of Bose, J., in his order of reference in *Narayana Sonaji v. Sheshro Vithoba* AIR 1948 Nag.

238, wherein it was said that the words "illegality" and "material irregularity" do not either errors of fact or law. They do not refer to the decision

arrived at but the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or

fact after the formalities which the law prescribes have been complied with.

18. Lastly in *D.S. Chellammal Anni Vs. Nasanan Samban*, , the Revenue Divisional Officer, misconstruing the law, had failed to give the tenant

time for deposit of the rent u/s 3 (4) of the Madras Cultivating Tenants Protection Act (XXV of 1955). The High Court interfered. Their Lordships

of the Supreme Court held that the Revenue Divisional Officer had failed to exercise a jurisdiction vested in him by law and that the High Court

was justified in interfering u/s 115(b).

19. In view of the observations of the Privy Council and the Supreme Court it cannot be said that in this case the learned Subordinate Judge has

acted illegally or with material irregularity, but it is clear that he has failed to exercise a jurisdiction vested in him. In other words, Section 115(b)

applies and not Section 115(c).

20. In the result C.R.P. No. 1916 of 1966 is allowed. C.R.P. No. 383 of 1967 is allowed in part. The additional written statement will be

received, but omitting the last portion of paragraph a thereof and paragraphs 5 thereof as already indicated. The petitioners must, however, pay the

costs of the respondents-plaintiffs in C.R.P No. 1916 of 1966 (Counsel appeared

only therein).