
(1968) 10 MAD CK 0038
In the Madras High Court

Chinnaswami Naicker

APPELLANT

Vs

Kandasami Goundar and Others

RESPONDENT

Date of Decision : 25-10-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63

Citation : (1969) 1 MLJ 393

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—In my view the decision of the Court below is correct. The summary order was made on 16th June, 1966. There is no dispute that the suit should be instituted within a year of that date, and that, it should be in a representative capacity. Vide Madina Bibi Sahiba Vs. The Ismail Durga Association and Another, , The suit was filed on 5th September, 1966 and the written statement on 21st November, 1966. The defendants pointed out, in the written statement, the defect, to wit, the suit was not in a representative capacity. The issues were framed on 28th November, 1966 and the suit came up for trial twice, but was adjourned every time. The petition for amending the plaint, to make the suit a representative one, was filed only on 21st July, 1967. The Court below took the view that the application should be dismissed on the ground of limitation.

2. The view taken by the Court below is unsustainable. No doubt amendment of pleading should be freely allowed, at whatever stage it is asked for. But, this can only be subject the pleas as to limitation or other prejudice to the other party. If the suit had been instituted on 21st July, 1967 it would undoubtedly be barred, by limitation. Mr. Desikan for the petitioner urges that Madina Bibi Sahiba Vs. The Ismail Durga Association and Another, , is distinguishable on the ground that there application for amendment of the plaint was taken out after issues had been framed and the trial held thereon. But I see no difference in principle, whether the amendment is sought for after the expiry of the period of limitation

and at the stage of trial, before or after. The principle is that an application for amendment of the pleading should be within the time allowed for the institution of the suit.

3. Reference for the petitioner is also made to *Ayyamperumal Chettiar (died) and Others Vs. Palaniandi Chettiar*, . *Ramaswami, J.*, held, in similar circumstances, that an amendment should be freely allowed. That was a suit by an attaching creditor under Order 21, Rule 63 of the CPC to establish his right to attach and bring to sale certain property by avoiding a transfer of the property on the ground that it had been made with the intent to defeat his claim. The learned Judge, in view of *Madina Bibi Sahiba Vs. The Ismail Durga Association and Another*, , was aware that such a suit should be brought in a representative capacity in compliance with Order 1, Rule 8 of the Code. On the question of limitation, the learned Judge observed that it was by then well settled that in a suit of this nature, where on account of ignorance or misapprehension there was no prayer that the decree that may be passed should be for the benefit of all the creditors, amendment should be freely allowed even at a late stage.

4. With respect, I am not able to share that view. The question is one of limitation and not one of sympathy or expediency. If excusing the delay is permissible, that is another matter. In the absence of an enabling provision, I do not see how, if on the date the application for amendment was made the suit would have been barred by limitation, there is any escape but that the application has got to be dismissed on the ground of limitation, and that is the principle laid down in *Madina Bibi Sahiba Vs. The Ismail Durga Association and Another*, . As I said, on principle that case is not distinguishable from the instant one.

5. The petitions are dismissed, but with no costs.