

(1948) 10 MAD CK 0024
In the Madras High Court

Dharmalinga Chetti

APPELLANT

Vs

A.M. Krishnaswami Chetty

RESPONDENT

Date of Decision : 29-10-1948

Acts Referred:

Citation : (1948) 2 MLJ 644

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—The only point for determination in this petition is whether the lower Court erred in law by failing to exercise a jurisdiction vested in it by refusing to grant the amendment prayed for by the petitioner in his written statement. In his original written statement in the suit, which had been filed against him regarding four survey numbers, he had contended that he had got all the four survey numbers on transfer of their patta from the original owner of those numbers, Ellammal, in 1944, and had been in possession of all the survey numbers since then, paying the tax, and that the suit should be dismissed. Issues were framed on that footing. Later on, he put in an amendment petition for amending his written statement by pleading that items 1 and 2 of the plaint property had been sold to him orally by Ellammal in 1923 itself, and that he had been delivered possession thereof and had perfected his title thereto, and that he had been given items 3 and 4 only in 1944 when the patta of all the four items was transferred to him and he was given their ownership, as he discharged a small cause suit debt of Ellammal. The learned District Munsiff dismissed the amendment petition, holding that a completely new and inconsistent case was being set up, and that there was also no bona fides, and that the application was belated. The application cannot be said to be so belated as to refuse the prayer for amendment, since the trial had not begun, and amendments are allowed even in the course of first appeal and second appeal in deserving cases. As regards the absence of bona fides, that is a point which would only be made clear, in the circumstances of this case, when the trial is over and the evidence is let in. There is also no proof that a totally new and inconsistent case was sought

to be substituted by the amendment in question. The petitioner had stated in his original written statement, in a general way, that the patta covering all the four properties had been transferred to him in 1944 and that he had been in enjoyment ever since. The statement in the amendment petition, that he had got a right to items 1 and 2 out of those four properties by oral sale in 1923, will be certainly an addition to what he stated in the original written statement, but is not wholly inconsistent with that statement. It may be that the man forgot or overlooked the oral sale when he filed his written statement, and only relied on the transfer of patta regarding all the four items in 1944. It must be remembered that the patta regarding items 1 and 2 was not transferred in 1923 or on any date earlier than 1944. Undoubtedly, the petitioner was guilty of gross laches in not stating about the oral sale earlier. He ought to have stated that even in the original written statement; but for such laches, it is enough to saddle him with costs. Refusing the amendment would be too drastic a penalty. Costs are the supreme panacea for all procedural ills.

2. The alleged falsity of his case in the amendment need not, and should not, be gone into now. Doubtless, if it is false, he will fail in the suit itself with costs. This is not the stage where we can canvass the truth or falsity of the allegation in the plaint or written statement or amendment.

3. So, in my opinion, this is a case eminently fit for ordering an amendment on terms. The lower Court's order refusing the amendment will be set aside and the amendment asked for will be granted on condition of the petitioner's depositing in the lower Court within a month from today, a consolidated sum of Rs. 75, which will not be costs in the suit, petition, or any other proceedings whatever, for payment to the plaintiff as compensation for the waste of time, money, and energy, caused to him by his laches. If the amount is not paid, the amendment will not be allowed. The amount, if deposited will be allowed to be drawn out by the plaintiff or his counsel without any security.