

(1924) 12 MAD CK 0053
In the Madras High Court

Kariya Goundan and Another

APPELLANT

Vs

Tirukkaivelu Chetty and Others

RESPONDENT

Date of Decision : 03-12-1924

Acts Referred:

Citation : AIR 1925 Mad 585 : 87 Ind. Cas. 90 : (1925) 21 LW 639 : (1925) 48 MLJ 349

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—I think this petition should be allowed. The petitioners as plaintiffs instituted a suit for redemption of property mortgaged by their father. They subsequently applied to amend their plaint by including a claim against defendants 5 and 7 as the substituted mortgagees for the reduction of the amount that may be found as damages due and payable to them in respect of the alienation effected by defendants 5 and 7 of a portion of the mortgaged property. The learned District Munsif dismissed the petition characterising it as belated and vexatious. I think he was wrong. The powers of amendment conferred on the Courts under the present law are much wider than formerly and it has often been stated by very eminent Judges that all amendments should be allowed as would enable the Court finally to determine all matters in controversy between the parties. I have no doubt whatever that this claim which is now sought to be included in the plaint by way of amendment was omitted to be so included only by inadvertence or ignorance. But the learned Counsel for the respondents argued that the mere fact that a wrong order has been made by the Court below will not justify this Court in interfering at this stage in revision. I agree it is only in extraordinary circumstances such interference would be justifiable. In my opinion such interference would be justified in this case in view of the trouble, expense and delay that would be caused if the amendments were not carried out now. It is clear that if this amendment should not be made now the case will have to proceed in the Court of first instance and in the Court of Appeal, if the appeal should be allowed, the case will have to be remanded and

fought all over again. The learned Counsel for the respondents has drawn my attention to certain cases in which it was held that though the amendment applied for to be made by the plaintiff was proper and was refused by the Lower Court, that was no reason for the High Court interfering by way of revision at that stage. I have not been able to see what was the nature of the amendments that were applied for to be made in those cases. However that may be, all those cases have been recently considered by the learned Judges of this Court, specially in the case of Sri Poosapathi Ramachandra Raju v. Sri Rajah Vachavayi Venkata Subbayamma (1915) 29 MLJ 53 and this decision of Mr. Justice Kumaraswami Sastri has since been followed by several of the learned Judges of this Court. There is no doubt whatever that this Court having the right to revise even in respect of the proceedings in pending suits would undoubtedly do so in proper cases and the only question is whether having regard to the circumstances of this case the Court should interfere or not. Having regard, as I have already said, to the amount of trouble, expense and delay that would be caused if the amendment should not be carried out immediately, I am of opinion that the order of the District Munsif should be set aside and I accordingly set it aside.

2. Respondents 1 to 5 will pay the costs of the petitioners in this Court.

3. This petition has been withdrawn by the petitioners' vakil so far as the 6th respondent is concerned, who is a minor and for whom a guardian has not been appointed.