

(1946) 12 MAD CK 0015
In the Madras High Court

Kommanduru Seshamma and Another	APPELLANT
Vs	
K. Seshadri Ayyangar and Others	RESPONDENT

Date of Decision : 18-12-1946

Acts Referred:

Citation : AIR 1948 Mad 179

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—This is a petition by defendants 1 and 2 in O.S. No. 155 of 1944 on the file of the Subordinate Judge's Court, Nellore to

revise the order of the learned Subordinate Judge allowing the amendment of the plaint in the following circumstances. The suit was instituted by

respondent 1 for recovery and possession of the properties described in the plaint schedule. The plaintiff's case was based on two specific titles.

One was on the footing that he had been validly adopted to one deceased Venkatacharlu to whom the suit properties admittedly belonged. The

other was under his last will and testament dated 21-8-1936 bequeathing in favour of the plaintiff the entire estate as a persona designata. In para.

7 of the plaint, it was alleged that on 12-8-1936 the deceased Venkatacharlu got a draft will prepared and on 16-8-1936 he gave the draft to

respondent 1's father for his approval and that exception was taken to it on the sentimental ground that it contained inauspicious reference to the

early death of the plaintiff. In para. 12 there was an averment that the will of 21-8-1936 propounded by the plaintiff contained recitals that the

plaintiff had been taken in adoption and that the testator intended to have the datta-homam an upanayanam performed and that it also contained a

direction to defendant 1 that his widow should perform these acts. For his title based upon adoption he relied upon certain facts set out in paras. 5

and 6 of the plaint. It is not necessary to deal with them in any detail. The contesting defendants in their written statement inter alia stated that the

deceased Venkatacharlu, as a matter of fact, executed a will on 16-8-1936 but that it was duly cancelled by him on 21-8-1936 for certain

reasons. In spite of these allegations, the plaintiff did not take any steps at that stage to file a statement in rejoinder nor did he choose to file an

application for amendment. After the trial commenced and after the evidence for the plaintiff was over and the evidence, on behalf of defendants

was being taken an application for the amendment of the plaint was made. By this amendment the plaintiff sought to add the following paragraph

after para. 14 of the plaint:

In the written statement of defendant 1 it is contended that Venkatacharlu got a will written on 12-8-1936 and executed on 16-8-1936 and got it

duly attested but that he cancelled it on 21-8-1936 for reasons mentioned in the written statement. Plaintiff submits that while it is true that

Venkatacharlu executed a will on 16-8-1936 he did not cancel it on 21-8-1936 as pleaded by the defendant. The allegation in the written

statement of defendant 1 regarding the circumstances and reasons for the said cancellation by the said Venkatacharlu on 21-8-1936 are all false.

The handwriting of the alleged cancellation and the signature dated 21-8-1936 are not those of Venkatacharlu and are concoctions for the purpose

of this suit. If for any reason, the Court should hold that the will dated 21-8-1936 propounded by the plaintiff is not true, the plaintiff is entitled to

fall back upon the will dated 12-8-1936 as being the last will and testament of the late Venkatacharlu and support his claims for the reliefs in the

suit thereby. Even if it is held that the will dated 12-8-1936 was the last will and testament of the late Venkatacharlu and was cancelled the

cancellation would not revoke the authority to adopt therein and any adoption made by defendant 1 contrary to the directions therein would be

invalid in law.

2. This paragraph which was sought to be added comprises arguments as well as fresh allegations in support of the plaintiff's claim. Firstly it is

sought to be contended that the alleged cancellation relied upon by the

contesting defendants is not true. For this I do not think there is any necessity at all for additional pleading. The defendants took upon themselves to put forward a specific case of a will and its cancellation on 21-8-1936 for certain reasons. The onus would be on them to prove that there was a cancellation as alleged by them. It is always open to the plaintiff without any amendment to challenge by way of cross-examination or by other rebutting evidence the case of a valid cancellation. It can be argued by the plaintiff that the defendants have not proved their case of a valid cancellation either because the signature purporting to be that of the testator is not genuine or for any other reason. As I have already mentioned there is no reason for allowing the amendment of the plaint on this ground.

Secondly the amendment is not necessary to set out the contention contained at the end of the paragraph namely, that if the cancellation is genuine such cancellation would not in law have the particular result for which the defendants contend. We are, therefore, left with the following clause which really contains a substantive addition sought to be made to the plaint, namely:

If for any reason, the Court should hold that the will dated 21-8-1936 propounded by the plaintiff is not true, plaintiff is entitled to fall back upon

the will dated 12-8-1936 as being the last will and testament of the late Venkatacharlu and support his claims for the reliefs in the suit thereby.

Here again it may be mentioned, if all that the plaintiff seeks to obtain by this amendment is only permission to rely upon the recitals contained in the

will dated 12-8-1936 as having some evidentiary value on the factum of adoption; in my opinion, he will be entitled to rely on such recitals without

an amendment of the plaint. The plaintiff can always rely on any statement which he thinks, will be of any material help to his case contained in

documents filed on behalf of the defendants. If, however, as was made clear by the learned advocate for the plaintiff by this amendment the plaintiff

seeks to rely on dispositions contained in the will dated 12-8-1936 as the basis of his title to the suit properties I am clearly of opinion that the

plaintiff is not entitled to the amendment. The original plaint proceeded on two alternative titles; (1) a title as the adopted son of the deceased

Venkatacharlu and (2) a title as the legatee under the will of the said Venkatacharlu dated 21-8-1936. Now the plaintiff wants by this amendment

to rely upon a third title, namely, title under the will dated 12-8-1936. One of the rules stated by Mulla in his commentary of the CPC is that where

the plaintiff bases his claim on specific title he will not be allowed, to amend the plaint so as to base it on a different title.

3. The learned advocate for the plaintiff relied upon several decisions of this Court in which amendments have been allowed. In my opinion none of

those decisions has any direct bearing on the facts of this case and so I shall very briefly deal with them. In Mangammal Vs. Rengappa Naicker

and Others, the plaintiff claimed title to the property on the ground that it had fallen to the share of her husband and had been in his enjoyment for

over thirty years. It was alleged in the written statement that the property in question was not joint family property and the plaintiff sought to amend

the plaint by also relying on long possession and title by adverse possession. In that case the defendants admitted that there was partition between

the plaintiff's husband and themselves. There was no question, therefore, of joint or constructive possession. The plaintiff had already stated that

her husband had exclusive possession for a period well over the statutory period. By the amendment she was only allowed to develop her case by

adding a new legal basis on the same facts. In Chellam Sakka Raja v. Muthuswami Moopanar AIR 1936 Mad. 632 the suit was on a promissory

note which turned out to be invalid and it was conceded by the learned advocate for the defendant in that case that the plaintiff could sue on the

original cause of action. The learned Judge held in that case that by allowing the amendment the lower Court did no more than allow the plaintiff to

fall back upon the original cause of action. In Muthammal Vs. Gurusami Nayakkan, the plaintiff originally mentioned one ground of exemption from

the bar of limitation and was subsequently allowed to add another ground of exemption. The decision in Bhimudu v. Pitohayya AIR 1946 Mad.

497 dealt with an entirely different set of facts which arose on account of the events happening subsequent to the original institution of the plaint.

Defendant 1 in that case died and the plaintiff became entitled to possession of the entire property.

4. In my opinion, therefore, the learned Judge ought not to have allowed the amendment. I therefore allow the revision petition and dismiss the

application in the lower Court, I. A. No. 419 of 1946 with costs throughout.