

(1921) 03 MAD CK 0009
In the Madras High Court

M.A. Velappa Nadar

APPELLANT

Vs

Muna China Pena Chidembara Nadar and Others

RESPONDENT

Date of Decision : 15-03-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1922 Mad 174 : (1922) 16 LW 186 : (1922) 43 MLJ 277

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The Subordinate Judge held that the suit is rightly constituted and that it is not bad for misjoinder of parties and

causes of action. The defendants ask the High Court to interfere with this order in revision.

2. It is objected that this order is not liable to be revised by the High Court. Several cases have been cited in regard to this matter, but I shall refer

only to cases of this Court as by reason of the great divergence of judicial opinion that prevails, no useful purpose will be served by a discussion of

the cases decided by the other High Courts.

3. In Venkatarama Rao v. Venkatalingama Nayanam Bahadurvaru (1920) 42 M.L.J. 43, an order allowing an amendment of the plaint was set

aside in revision. In Sri Poosapathi Ramachandra Raju v. Sri Rajah Vachavayi Venkata Subbayamma (1915) 29 M.L.J. 53, this Court set aside

an order of the Subordinate Judge, directing the defendants to the an additional written statement to meet a case set up in the course of the

plaintiff's pleader's argument. In a Letters Patent Appeal from a decision of Mr. Justice Coutts-Trotter, Vaithilingam v. Ramalingam Pillai (1916) 6

L.W. 9 Ayling and Seshagiri Iyer, JJ. interfered with an order refusing to add on this application the son of a trustee sued u/s 92 of the Civil

Procedure Code, A different view had been taken by Mr. Justice - Coutts Trotter who while holding that the son was a proper and necessary

party, dismissed the C.R.P. on the ground that no question of want of jurisdiction arose which necessitated the interference of the High Court. In

Shanmuka Nadan v. Arunachalam Chetti (1921) 14 L.W. 642, Oldfield and Ramesam, JJ. held that an order striking out the names of certain

defendants from the record on the ground of their improper joinder was liable to be interfered with in the exercise of the High Court's powers of

revision. They observe: "No doubt we should not be justified in such interference on the sole ground that the lower court had made a mistake in

law; but here we think that it has done more than that. For it has entirely misunderstood the nature of the judicial discretion, which it was called

upon to exercise. This is clear, when reference is made to the grounds of its Order." The learned Judges, set aside the order of the Subordinate

Judge and directed him to proceed with the trial retaining on the record as parties, the defendants whose names he struck out. A different view was

however taken in Ramanathan Chetti alias Ramaswami Chetti v. Kadiresan Chettiar (1914) 14 M.L.T. 511. The Subordinate Judge holding that

some parties were improperly joined directed the plaintiffs to strike out of the suit any one of the two sets of the defendants and Miller, J held that

the question whether the Subordinate Judge was right or otherwise was not one which he was entitled to determine u/s 115. Srinivasa Iyengar, J. in

Sitaramaya v. Ramappaya (1916) 5 L.W. 207 set aside in revision an order directing the addition of certain defendants and observed that the

question of misjoinder and nonjoinder were not really issues for trial in the suit and that the High Court had power to interfere although the plaintiff

would have a right of appeal from a decree dismissing his suit. He says; "The plaintiff is entitled to be relieved from this state of embarrassment and

this Court has power to interfere at this stage as otherwise manifest injustice may be done to the plaintiff; as observed, by Lord Justice Lindley (as

he then was) the question is not one of exercise of discretion by the lower Court but want of jurisdiction". In Arunachellam v. Arunachellam (1921)

43 M.L.J. 218 (decided recently by Oldfield, J. and myself) we held that we could revise an order directing the plaintiff to elect whether he would

proceed with the one or the other of the two causes of action joined in his plaint and we were of the opinion that in the circumstances it would be

convenient and proper to deal in one suit with the questions raised and we accordingly set aside the order of the Subordinate Judge observing that

the question whether use of our revisional powers is authorized by Section 115 of the CPC in such a case is concluded in petitioner's favour by the

course of authority in this Court.

4. From these authorities it is clear that powers of revision have been exercised in cases where the lower court held that the suit was bad for (1)

misjoinder of parties (2) non-joinder of parties and (3) misjoinder of parties and causes of action. It is contended, that although a decision which is

adverse to a plaintiff is liable to be revised, the High Court must refuse to interfere with an order in favour of a plaintiff; in other words, as the

Subordinate Judge in the present case gave a decision in favour of the plaintiffs, that the suit is not bad for misjoinder of parties and causes of

action, the use of revisional powers is not authorised. I fail to see the distinction and I shall therefore proceed to examine whether the defendant has

established a case for interference.

5. The facts of the case are briefly these. The 1st and 2nd plaintiffs are the brothers of plaintiffs 3 and 4 who are girls. The 1st defendant is their

maternal grand father and the other defendants are his co-parceners. Certain sums of money were deposited with the 1st defendant by the

plaintiffs' father. Subsequent to the latter's death in 1907, the 1st defendant collected other sums of money. The plaintiffs state that the amounts

deposited as well as those collected belonged either to the father of the plaintiffs or to the joint family consisting of him and plaintiffs 1 and 2. These

sums are claimed by the 1st and 2nd plaintiffs. It is also stated in the plaint that certain sums were deposited with the 1st defendant by the plaintiff's

mother, that she died in 1906 and that after her death the 1st defendant sold jewels which she was wearing and took possession of the sale

proceeds. It is alleged that though the apparent owner of the moneys so deposited and of the jewels was the plaintiff's mother, the real owner was

either the plaintiff's father or the aforesaid joint family and that therefore plaintiffs 1 and 2 are also entitled to the deposit and the sale proceeds.

The plaint proceeds to say that if the Court should for any reason hold that the

real owner was the plaintiffs' mother, plaintiffs 3 and 4 as her heirs would be entitled to the deposit made in the mother's name and to the proceeds of the jewels. That is to say, the plaintiffs 1 and 2 claim the entire subject matter, in a certain contingency. It is alleged that plaintiffs 3 and 4 have a right to a portion of the subject matter. There is a further allegation in the plaint that the 1st defendant had admitted that he had been holding the first mentioned amounts on behalf of Plaintiffs 1 and 2 and the last mentioned amounts on behalf of all the plaintiffs. The plaintiffs added ""In view of the minority of all the plaintiffs any question as to their rights inter se is reserved by the plaintiffs "".

6. The right to relief claimed is in respect of or arises out of the same act, that is, the act of the unlawful detention of the moneys by the 1st defendant. The right to relief is alleged to exist in the alternative in the first or the second set of plaintiffs in regard to a portion of such relief. There is a common question of fact to be decided, the wrongful withholding of the moneys. I am therefore satisfied that the case falls within Order 1 Rule 1 and that the Subordinate Judge has correctly decided the question regarding the misjoinder of parties and causes of action. Order 1, Rule 1 is very much wider in its terms than the corresponding section of the CPC of 1882 and is identical in its wording with Order 16 Rule 1 of the rules of the Supreme Court. I do not think I need deal at any length with the English cases that were cited before me and it is sufficient merely to refer to *Stroud v. Lawson* (1898) 2 Q.B. 44. *Universities of Oxford and Cambridge v. George Gill and Sons* (1899) 2 Q.B. 44. and *Drincqbier v. Wood* (1899) 2 Ch. 393.

7. I am also of the opinion that, apart from the question of the correctness of the view of the law taken by the Subordinate Judge, considerations of convenience and justice are also on the side of the plaintiffs. I would therefore in any event refuse to interfere with this order in revision and my judgment is therefore for the plaintiffs and I would dismiss the Civil Revision Petition with costs.