

(1948) 11 MAD CK 0050
In the Madras High Court

M.K. Krishna Rao

APPELLANT

Vs

Sri Gangadareswarar Temple and Other Connected Temples

RESPONDENT

Date of Decision : 16-11-1948

Acts Referred:

Citation : (1949) 1 MLJ 64

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

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—The point for determination in this petition is whether the lower Court in law in refusing to allow the amendment sought for by the first defendant in his statement even on terms and in straightaway finding against the allegations in the amendment sought for on merits though the amendment had not been allowed, an issue framed, and the parties had not let in the requisite oral and documentary evidence and adduced arguments thereon.

2. I am of opinion that, in the circumstances of this case, the lower Court ought to have allowed the amendment on terms, and ought not to have given its findings on the contention in the amendment without first allowing the amendment and framing an issue thereon and allowing both sides to adduce the relevant oral and documentary evidence and the arguments they desired. The suit had begun to be heard though there was, undoubtedly, some laches on the part of the first defendant who had allowed the present trustees to be brought on record without objecting then, perhaps because he had not fully looked into the rulings on the subject and made himself acquainted with all the relevant facts. But, all that would be only a matter of costs. Costs are, certainly the supreme panacea for all procedural ills. I do not see any possible damage to the other side if suitable costs, which I fix at Rs. 60, are given to them as a condition precedent to the amendment and these costs are made not costs in any suit or proceedings but declared to be merely a solatium. It is desirable that the proper procedure should be followed in all proceedings in public interests and that an intended amendment should not be discussed and found against even before it is allowed

to be incorporated, and issues framed thereon, and evidence and arguments adduced on it.

3. I, therefore, set aside the lower Court's order dismissing the petition for amendment, and allow the amendment on condition of the petitioner's paying the respondents, or depositing in the lower Court, for payment to the respondents, a consolidated sum of Rs. 60, which will not be costs in the suit or any other proceedings whatever, to compensate them for the waste of time, money and energy caused by his laches, within a month from today, failing which payment or deposit this petition will stand dismissed with costs.

4. In case the payment is made, the petition will be allowed without costs, and" the lower Court will proceed to frame the issues on the point involved in the amendment, allow the parties to adduce the relevant oral and documentary evidence, and dispose of the suit in the usual course.