

(1936) 08 MAD CK 0034
In the Madras High Court

M.S.A. Subramania Mudaliar Firm by partner M.S.A.
Subramania Mudaliar

APPELLANT

Vs

The East Asiatic Co. Ltd., by Managing Agent

RESPONDENT

Date of Decision : 28-08-1936

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : AIR 1936 Mad 991 : 165 Ind. Cas. 939 : (1936) 44 LW 648 : (1936) 71 MLJ 663

Hon'ble Judges : K.S. Menon, J

Bench : Division Bench

Judgement

K.S. Menon, J.—This is an application to revise an order of the District Munsif of Vellore, dated 30th March, 1936, dismissing an

application of the plaintiff to amend the plaint and to treat the suit as having been instituted on 25th September, 1933 or on 28th March, 1936, the

date of the application for amendment.

2. The plaintiff in this suit is a firm. When the defendant raised the objection that as the firm was not registered the suit was liable to be dismissed in

view of the provisions of Section 69 of the Indian Partnership Act, the plaintiff got the firm registered and applied for the amendment of the plaint

as mentioned above. The lower Court dismissed the application holding that by the amendment the defect which existed at the time of the institution

of the suit could not be rectified and that the suit could not be treated as having been instituted on the date of the petition for amendment; hence this

petition.

3. It is not disputed - and indeed it is clear that the suit as originally instituted was incompetent because of the provisions of Section 69 of the

Indian Partnership Act. It is also clear that any subsequent amendment of the petition after getting the firm registered under the Act cannot relate back to the date of the institution of the suit so as to cure the defect which existed at the time of institution. So, unless the plaintiff gets a further order that the suit should be deemed to have been instituted on the date of the amendment, the amendment itself will be of no use. This is admitted by the learned advocate for the petitioner. The question therefore is whether such an order could be made. The petitioner relies on a decision of this Court reported in Ramakrishna Nadar and Another Vs. Ponnayya Thirumalai Vandaya Thevar and Others, , where it was held that though costs ordered when an application to sue as a pauper was dismissed were not paid before the institution of a subsequent suit, but only after, still the suit could be treated as one instituted on the date of such payment of costs and need not be dismissed altogether. But, I do not think that the principle of that decision can be applied to the facts of this case. There was no question there of any amendment of the plaint, to take effect on the date of amendment. The provisions of Section 69 of the Partnership Act are not at all analogous, but are entirely different from those of Order 33, Rule 15, Civil Procedure Code. When it is provided imperatively by the statute that no suit shall be instituted unless the firm is registered, I do not think that it can be got round by a subsequent registration and amendment. The plaint as originally filed is, in the eye of the law, no plaint at all because u/s 69 it was not maintainable. In these circumstances I see no reason at all why an amendment to validate it on a subsequent date should be allowed at all. Further in this case it is admitted that a properly framed suit has been filed subsequently by the plaintiff and that it is pending trial. I think the lower Court was right in refusing the amendment. The petition is therefore dismissed with costs.