
(1957) 11 MAD CK 0035
In the Madras High Court

Muthuswami Raja

APPELLANT

Vs

Ramu Ammal

RESPONDENT

Date of Decision : 22-11-1957

Acts Referred:

Citation : AIR 1958 Mad 461 : (1958) 71 LW 175 : (1958) 1 MLJ 302

Hon'ble Judges : Subrahmanyam, J

Bench : Division Bench

Judgement

Subrahmanyam, J.—The petitioner seeks to revise the order of the learned Subordinate Judge of Ramanathapuram declining to allow the petitioner to amend his written statement. The suit was by the defendant's daughter-in-law, the widow of his deceased son, for partition and separate possession of the properties which belonged to the joint family consisting of the petitioner, the plaintiff's husband and his brothers. The petitioner in his written statement gave a list of the properties which were his separate properties and admitted by implication the plaintiff's right to partition and separate possession in respect of the other properties in the plaint schedule. By the application for amendment which has given rise to this revision petition, the petitioner prayed that one other item be added to the properties which he claimed as his separate property. The learned Subordinate Judge considered that to allow the amendment would be to permit the petitioner to go back on his admission that that particular item belonged to the joint family and that the petitioner should not be allowed to do so. In that view, he dismissed the petition.

2. The learned Subordinate Judge does not say that the petitioner's failure to include this particular item among the items of his separate properties was not due to a mistake. Any error due to a mistake could be permitted to be corrected by an amendment made during the pendency of the suit. Whether in any particular case the amendment would rectify a mistake would depend on the facts of that case.

3. The learned advocate for the respondent relies on Shaik Masthan Sahib Vs.

Palayani Balarami Reddi, , in support of his proposition that a party ought not to be allowed by way of amendment to change an earlier allegation made in his pleading. I do not think that that ruling supports the proposition in that broad form. In that particular case, the cause of action pleaded in the plaint was examined in the written statement and certain admissions were made regarding material facts constituting the cause of action. The learned Judge held that the defendant should not by an amendment be allowed to repudiate those admissions in relation to the material facts which constituted the cause of action. That decision cannot be held to apply to a case of a mistake in relation to an individual item of property in a case like the present.

4. The learned Counsel for the respondent relies also on Y.A.A.V.R. Sethuraman Chettiar Vs. K.K.R.M.R.M. Ramanathan Chettiar (died) represented by his Legal Representatives Muthiah Achi and Others, . That was a case where the amendment, if allowed, would change the cause of action. That again cannot apply to the facts of the present case.

5. I consider that the learned Subordinate Judge acted with material irregularity in the exercise of his jurisdiction in refusing to allow the amendment prayed for. The learned Subordinate Judge overlooked the fact that, if the petitioner were held to the particular admission made in the statement initially filed in regard to this property, the petitioner would be prejudiced in relation not merely to the plaintiff but in relation to his other sons also. The learned Subordinate Judge's order is set aside. The petition is allowed. The written statement will be amended as prayed for. The petitioner will, however, pay the plaintiff's costs in the application for amendment in the lower Court and in the Civil Revision Petition in this Court.