

(1909) 08 MAD CK 0031
In the Madras High Court

N. Subbaraya Iyer and Others		APPELLANT
	Vs	
Vaithinatha Iyer and Another		RESPONDENT

Date of Decision : 11-08-1909

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(1)
Limitation Act, 1963 — Section 22

Citation : (1910) ILR (Mad) 115 : 5 Ind. Cas. 931

Hon'ble Judges : Sankaran Nair, J; Miller, J

Bench : Division Bench

Judgement

Miller, J.—We are bound by the decisions of this Court to hold that the suit is not maintainable unless Meenakshi Ammal is the plaintiff and I cannot accede to the contentions of the Advocate-General that as the suit has been framed she is a plaintiff by implication, or that the statement in the plaint to the effect that the money belongs to the plaintiffs amounts to an assignment to the plaintiffs. I think, therefore, that the suit must be dismissed unless she can now be made a plaintiff. I have no doubt that this can be done under Order I, Rule 10(1) Vide Krishna Bai v. The Collector and Government Agent, Tanjore 9 M.L.T. 447 and the only question is whether if it is done now the suit will not be barred by limitation.

2. We cannot bring her on the record now as from the date on which the suit was actually instituted; it is not very clear to me what was the effect of the order in Seshamma v. Chennappa 20 M.k 467, in the matter of dates, but clearly the learned Judges did not intend to make their amendment date back to the date on which the suit was originally instituted. Had they felt themselves able to do that, no question of limitation could have arisen.

3. The utmost we could do on the authority of that case would be, it seems to me, to date the amendment as of the date on which the Court of first instance ought to have made it and that could not be earlier than the date of application and the suit, if instituted on that date, would have been already barred by limitation.

4. The earliest date then on which Meenakshi Ammal could appear as plaintiff is a date on which the suit if then instituted would be barred, and if the effect of the amendment bringing her on record is to bring on a new plaintiff within the meaning of Section 22, Limitation Act, the bar will not be saved.

5. I agree with the observations of the learned Judges in *Fatmabai v. Pirbhai Virji* 21 B. 580 at p. 584, to the effect that the language of Section 22 of the Limitation Act precludes the view that a plaintiff added or substituted is not a new plaintiff if he is made a party merely for the purpose of more correctly representing the title originally asserted, and that *Subodini Debi v. Cumar Ganoda Kant Roy Bahadur* 4 C.p 400, cannot be regarded as an authority from which a general proposition ought to be deduced.

6. The effect of Section 22 of the Limitation Act is that in a suit of the kind before as a mistake to be corrected under Order I, Rule 10(1) must be corrected before the limitation period of the suit expires.

7. That this may work hardship in certain cases is recognised in *Fatmabai v. Pirbhai Virji* 21 B.k 580 and it is fairly arguable that it does so in the present case, but having given my best consideration to the subject, I think, the law requires us to hold that no amendment which we could now make would save the suit from the bar of limitation, and that we must consequently allow the appeal and dismiss the suit: but as the law as to the necessary parties to a suit on a negotiable promissory-note had not been finally declared by this Court when the suit was instituted in 1905, I think we ought to dismiss it without costs.

Sankaran Nair, J.

8. The plaintiffs are clearly not entitled to sue on the promissory-note. Their application to substitute their mother as plaintiff was not made till after the case was argued and closed in the Court of first instance, though the objection that the plaintiffs are not entitled to sue was raised in the written statement of the first defendant. I do not think, therefore, that their application ought to be allowed.

9. I agree, therefore, that the suit must be dismissed but in the circumstances without costs.