

(1916) 09 MAD CK 0030
In the Madras High Court

P.M.A. Rm. Muthiah Chettiar and Others	APPELLANT
Vs	
A.V.A. Chitambaram Chetti and Another	RESPONDENT

Date of Decision : 18-09-1916

Acts Referred:

Citation : (1916) 4 LW 456 : (1916) 31 MLJ 688

Judgement

1. We have already held in Nagappa Chettiar v. Chidambaram Chettiar (1916) 31 M. L J. 684 that the question when the agency terminates is a question of fact in each case. In this very case, the agent does not say that his agency terminated at the expiry of three years. The fact that certain inums or items of credit or debit were handed over at the place of business in foreign parts to the successor does not necessarily put an end to the agency of the predecessor. In this view, the case has to go back. We ought also to point out that the learned Subordinate Judge in the Court below was in error in holding that he had no power to allow the plaintiff to amend the plaint by setting up a latter referred to in the defendants' own written statement as an acknowledgment of liability on the ground that such amendment will take away from the defendants the benefit of the pleas of limitation which they would otherwise have for which he thinks Weldon v. Neal (1887) 19 Q.B.D. 394 is an authority. But that case does not lay down that an acknowledgment which existed at the time of the institution of the suit cannot be pleaded by amendment. If a cause of action is sought to be added by way of amendment and if a fresh suit on that cause of action would be barred if instituted when the amendment is asked for, then ordinarily, even then the rule is not absolute Mulla Vittil Suthi Kutti Vs. Korambatt Painthali Achutan Nair and Others, the courts would not allow the amendment so as to give the plaintiff the benefit of the time between the date of the institution of the suit and the time of amendment and prejudice the defendant, by as it were, antedating the institution of the suit. That has nothing to do with a case when no new cause of action is sought to be added but an amendment is sought to be made for the purpose of showing that the original cause of action as laid was not barred. The amendment, we think, should in the circumstances of this case have been

allowed and we allow the plaintiffs to amend the plaint as required.

2. The decree of the first Court is reversed and the suit remanded for fresh disposal. Costs here and in the Lower Court to abide.