

(1890) 10 MAD CK 0016
In the Madras High Court

Pydel		APPELLANT
	Vs	
Chathappan and Another		RESPONDENT

Date of Decision : 20-10-1890

Acts Referred:

Citation : (1891) ILR (Mad) 150

Hon'ble Judges : Shephard, J; Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. The decree passed in Original Suit No. 162 of 1878 directed the first defendant alone to pay the amount decreed to the appellant; but the

judgment recorded in that suit showed that his karnavan was also intended to be made liable. The appellant attached four parcels of tarwad land in

execution, but the respondents objected to the attachment on the ground that the decree-debt was not a tarwad debt. Their objection being

overruled, they brought this suit to have it declared that tarwad property was not liable to be sold in execution of the decree in question.

Subsequently, the attachment was followed by sale and defendant No. 3, who was the purchaser at the Court sale, was made a party to the suit.

Subsequently to the sale, the decree was amended so as to include the karnavan among the defendants who were directed to pay the amount

decreed. Both the Courts below decreed the claim, and held that for the purposes of this suit, the decree must be taken to have been as it stood

originally and not as it was amended subsequently to the attachment and the sale. The contention before us is that the amended decree should be

treated as having been made on the date of the original decree.

2. It is provided by Civil Procedure Code, Section 206, that the decree must

agree with the judgment, and we must, therefore, take the amendment to have been made in accordance with a rule of law. This being so, it cannot be treated as one made to the prejudice of the respondents karnavan who was a party to the suit. The contention that the amended decree must be taken as in force from the date of the original decree appears to be well-founded. There is a distinction between a case of amendment and one of novation or substitution. When an instrument is amended so as to express the real intention which it was intended to express, but which it did not completely express, the transaction is not in substance varied, but its inaccurate description is only rectified. It is also true that an amendment ought not to be allowed to operate so as to prejudice a third party, and the question, therefore, is whether the respondents have really been prejudiced in respect of the right which they seek to establish. Their contention that a mere error ought not to be rectified is entitled to no weight. But it may be that they are prejudiced if, as alleged by them, the decree-debt is not binding on their tarwad, or if tarwad property has been sold for an inadequate price by reason of the defect in the decree, as it stood originally. In the view which we take of the case, viz., that the amended decree was operative from the date of the decree except as specially provided for by Civil Procedure Code, Section 32, it must be decided once for all in this suit whether the plaintiffs are entitled to the relief sought for or to any and what other relief.

3. We shall ask the Subordinate Judge to return a finding on the third issue, and also on the question whether the lands in dispute have been sold for less than their proper value.

3. Findings to be returned within six weeks from the date of the receipt of this order, when seven days after the report of the receipt of the finding will be allowed for filing objections.

4. [In compliance with the above order, the Subordinate Judge submitted findings to the effect that the debt for which the decree was obtained was contracted for the proper purposes of the plaintiffs' tarwad; and that the lands in dispute had not been sold for less than their proper value.]

5. This second appeal having come on for final hearing, the Court delivered judgment as follows:

6. We accept the finding to which no objection is taken. The decrees of the

Courts below must, therefore, be reversed and the suit dismissed. The respondents must pay the appellant's costs throughout. No order is necessary on the memorandum of objections.