
(1917) 11 MAD CK 0045
In the Madras High Court

Ramaswami Reddi

APPELLANT

Vs

Genga Reddi and Others

RESPONDENT

Date of Decision : 28-11-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1918 Mad 316 : 45 Ind. Cas. 649

Hon'ble Judges : Seshagiri Aiyar, J; Napier, J

Bench : Division Bench

Judgement

1. The present plaintiff first brought a suit against the defendants to recover 2 out of 5 shares in one plot of property. He also asked in the alternative that he should be given 2 out of 12 shares in that and another plot of property. The District Munsif gave him a decree for 2 out of 5 shares in the first plot. There the defendant preferred an appeal to the District Court. Before the appeal was beard, the plaintiff sued to recover mesne profits in respect of the property decreed to him by the District Munsif, as he faced reserved his right to sue for such mesne profits. In appeal, the District Judge modified the decree of the Munsif and gave the plaintiff 2 out of 12 shares in both the plots. Thereupon the plaintiff presented a petition to the District Munsif to allow him to amend the plaint by inserting a claim for mesne profits on 2 out of 12 shares in both the plots. This amendment was disallowed by the District Munsif, as he Held that the nature of the amendment was such as to Bange the character of the suit. His view was upheld in appeal; and this second appeal has been preferred against that judgment. We are unable to agree with the Courts below.

2. We agree with the statement of law contained in the judgment of Oldfield and Krishnan, JJ., reported as Gatiganti Subbarayudu v. Arumilli Surayya 37 Ind. Cas. 914., where they point out that, on a question of the propriety of allowing amendments, each case will have to be decided on the facts presented to the Court. In the present case, the amendment prayed for will not alter the nature of the suit, nor will there be an addition of a new cause of action. The principle to

be borne in mind by Courts below is, that, provided the opposite party is not taken by surprise, nor precluded from adducing evidence nor from raising the necessary issues, the amendment should ordinarily be allowed. In the present case, on the date of the application for amendment, the suit was at the very initial stage of the proceedings. No issue had been raised and no evidence had been let in, and, therefore, the District Munsif ought, in the circumstances", to have allowed the amendment. At the same time, we wish to point out that where the plaintiff is agitating only a technical claim or where the character of the suit is likely to be altered, or where there has been an inordinate delay in asking for amendment, the Court will be justified in refusing to grant an amendment. The main considerations to be borne in mind are that multiplicity of suits should be avoided and the interests of substantial justice should be advanced.

3. As regards the cases quoted at the Bar, Mr. Krishnaawami Aiyar strongly relied upon the observation of Lord Esher in *Weldon v. Neal* (1887) 19 Q.B.D. 394 : 56 L.J.Q.B. 621 In that case, the amendment necessitated the adding of a new cause of action, as was pointed out by the learned Master of the Rolls. Moreover, it has to be borne in mind that in England pleadings are drafted with greater care than in this country. In an early case before the Judicial Committee of the Privy Council reported as *Mohummud Zahoor Ali Khan v. Musammat Thakooranee Rutta Koer* 11 M. I A. 468 : 2 Sar. P.O.J. 320 it was pointed out that Courts should have regard to the loose way in which pleadings are prepared in India, and should, as far as possible, allow amendment of the pleadings, in order to avoid a claim being barred by the Statute of Limitation. This is quite consistent with the view taken in *Weldon v. Neal* (1887) 19 Q.B.D. 394 and we are certainly bound to follow this dictum of the Judicial Committee in preference to the decision of the Master of the Rolls in *Weldon v. Neal* (1887) 19 Q.B.D. 394 : 56 L.J.Q.B. 621.

4. Mr. Krishnaswami Aiyar also relied upon certain observations of the present learned Chief Justice in *Kumara Venkati Perumal Raja Bahadur Varu v. Velayuda Reddi* 24 Ind. Cas. 195. If we may say so, with respect, upon the facts presented to the Court in that case, we would not have been prepared to allow the amendment. In that case an attempt was made to get property not included in the application to be sold after 12 years from the date of the presentation of the first application. That was a case of gross carelessness and of great delay. Therefore the observations in *Kumara Venkata Perumal Raja Bahadur Varu v. Velayuda Reddi* 24 Ind. Cas. 195 do not conclude this case. On the other hand, in that same case, Mr. Justice Sadasiva Aiyar took a different view of Rule 17 of Order VI, Civil Procedure Code. In *Viridian v. Raja Kumara Venkata Perumal* 21 Ind. Cas. 782 the same learned Judge was a party to allowing amendment under similar circumstances. A case almost on all fours with the present case is *Sevugan Chetty v. Krishna Aiyangar* 13 Ind. 263 : 10 M.L.T. 567, where Benson and Spencer, JJ., allowed an amendment on grounds similar to the present case. This case was commented on by Oldfield and Krishnan, JJ., in *Gatiganti Subbarayudu v. Arumilli Surayya* 37 Ind. Cas. 914, but they did not disapprove of

the decision, although they pointed out that it was a case which had reached the high water mark in respect of allowing amendment? In the case before them, the learned Judges pointed out that the amendment sought for would not only change the nature of the suit, but would be diametrically opposed to it as originally presented, and that there was great delay in the presentation of the application for amendment. We think, in the circumstances of this case and having regard to the facts that the case of the defendants would not be changed and that there has been no delay in the presentation of the application for amendment, the Courts below should have allowed the amendment of the plaint.

5. We, therefore, reverse the decrees of the Courts below, and grant the plaintiff liberty to amend the plaint. It was due to the precipitate action of the plaintiff that there was necessity for this amendment, and in the circumstances, we think he should be directed to pay the costs of the respondents hitherto incurred in all the Courts. Further costs will be provided for in the revised decree.