

(1952) 12 MAD CK 0016

In the Madras High Court

Case No : Civil Revision Petition No"s. 1225 and 1226 of 1952

S. Duraiswami Nadar

APPELLANT

Vs

V.M. Nataraja Nadar and Another

RESPONDENT

Date of Decision : 12-12-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 21 Rule 63
Transfer of Property Act, 1882 — Section 53

Citation : (1952) 12 MAD CK 0016

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : C.S. Rajappa, for the Appellant; Y. Balakrishna Iyer, for the Respondent

Judgement

Govinda Menon, J.—The order of the lower Court refusing the plaintiff's application for amendment of the plaint by the addition of a prayer to the effect that he sues not only on his own behalf but also on behalf of the entire body of creditors of the defendant is unsustainable, in -- Seth Nandaramdas Atmaram by Agent Hemrajmul Vs. Zulika Bibi and Others, this Court has laid down that when a suit is originally laid under Order 21, Rule 63, C. P. C., an application by the plaintiff for amending the plaint so as to bring it in conformity with the requirements of Section 53, T. P. Act, should be allowed. The learned Judges discussed the entire case law on the point and came to that conclusion. That decision is binding on me and it is unnecessary to discuss this aspect of the case any further. It is interesting to note that in -- Madina Bibi Sahiba Vs. The Ismail Durga Association and Another, the learned Judges refused to allow an amendment in the High Court on the ground that the request was not made at the earliest possible opportunity.

When the defendant in that case raised the question that the suit was not filed in a representative capacity the plaintiff resisted that contention and having failed in that attempt requested the High Court at the very last stage to allow the

amendment. It was under those exceptional circumstances that this Court held that the amendment should not be allowed. In my opinion this is eminently a fit case in which the lower Court should have allowed the amendment. The order of the lower Court is, therefore, set aside and the plaint is directed to be amended as prayed for. If by making the amendment it becomes necessary to add other averments in the plaint to make it clear that the suit is on behalf of the entire body of creditors the plaintiff will be allowed to add such, further averments in the plaint. The respondent will pay the costs of the revision petition. One set only.