

(1926) 03 MAD CK 0077
In the Madras High Court

Sobhanadri Appa Rao and Another

APPELLANT

Vs

Venkataramayya Appa Rao

RESPONDENT

Date of Decision : 22-03-1926

Acts Referred:

Citation : AIR 1927 Mad 212

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—This is an application u/s 115, Civil P.C., and Section 107 of the Government of India Act to revise the order of the Subordinate Judge of Bezwada refusing to allow one of the amendments of the plaint prayed for by the plaintiffs. The plaintiffs applied for two amendments one of which has been allowed but the other was disallowed; and it is against the latter order that the plaintiffs have come up in revision.

2. The plaintiffs wanted to add in the plaint a statement that there was no final and completed partition and that they were, therefore, entitled to claim a fresh partition; it is this amendment that has been disallowed.

3. Under Order 6, Rule 17 all such amendments should be allowed as may be necessary for the purpose of determining the real questions in controversy between the parties. The learned Subordinate Judge refused to allow the amendment in question here, because he thought that the amendment was not likely to raise a case which would succeed if tried and because the amendment was asked for at a very late stage of the case. The Subordinate Judge has also observed that the amendment now applied for is inconsistent with the case set out in the plaint which proceeds on the footing that there was a partition. These grounds, it seems to me, are not sufficient to support his order. No doubt, the plaint has proceeded on the footing that there was no partition and then saying that, if there was one, that partition was invalid for reasons stated. The fact that the present amendment seeks to state a case in the alternative with the case already set out in the plaint is not a ground for disallowing it.

4. Nextly, it is on account of certain statements made by the plaintiffs in a lawyer's notice sent by them and on account of their having applied for the Madras Government to have the property declared an impartible zemindari and separately registered, that the Subordinate Judge thinks that the plaintiffs are likely to fail at the trial on the amended case. This is really prejudging the case. If the plaintiffs are unable to explain these circumstances at the trial, it will be time enough then to draw the necessary inferences from them. I do not think it is a fair ground for the disposal of the present application to say that the circumstances above stated are against the plaintiffs succeeding in making out the case put forward in the amendment.

5. Thirdly, as regards delay: no doubt, there has been some delay. But the learned vakil for the petitioners has explained how the delay has occurred. First of all, the plaintiffs tried to get an issue raised on the point. But that was disallowed on the ground that the plaint did not make the necessary averments for the issue. Plaintiffs filed this petition immediately after, so that the objection taken on the ground of the delay by the Subordinate Judge seems to me to be not valid. It would have been, in my view, a proper exercise of his discretion by the Subordinate Judge to have allowed both the amendments asked for, so that all the points in controversy between the parties might properly be heard and disposed of once for all.

6. It is lastly argued that this is not a fit case for interference u/s 115, Civil P.C., or the Government of India Act. Different views have been taken by different Judges as to the scope of these provisions in the various authorities which have been cited before me. But I am inclined to think that in matters of amendments and Court-fees and such like interference by the High Court would generally save the parties considerable expense and the Courts considerable loss of time, and it is desirable that the High Court should interfere in proper cases. The wording of the section is wide enough to allow me to interfere. Though Section 115, Civil P.C., deals only with questions of jurisdiction according to the decision of the Privy Council in *Balakrishna Udayar v. Vasudeva Aiyar* [1917] 40 Mad. 793 this case can be brought within the language used by their Lordships as an irregular exercise of jurisdiction. I am inclined, therefore, to think that I am justified in interfering in this case. But in order that the defendant may not be prejudiced in any way by granting the amendment, it seems to me that all the costs of the application for amendment both here and in the Court below should be paid by the plaintiff. I allow the revision petition and order the amendment to be made, but subject to the plaintiff paying the costs of the defendants both here and in the lower Court within one month after such costs are ascertained by the lower Court. On payment of such costs the plaint will be returned for the necessary amendment, and the suit will be disposed of according to law. On failure to pay the costs as directed above, the plaintiffs' petition to this Court will stand dismissed with costs.