
(1932) 08 MAD CK 0024
In the Madras High Court

Sree Mahant Prayag Dossjee Varu

APPELLANT

Vs

Raja Venkata Perumal

RESPONDENT

Date of Decision : 24-08-1932

Acts Referred:

Citation : AIR 1933 Mad 410

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—The learned Subordinate Judge has in an elaborate order setting out the pleadings and the nature of the amendment sought and

numerous decisions cited to him allowed the amendment of the plaint but made it conditional on the plaintiff paying Rs. 25 as costs to the defendant

which the defendant's advocate received. This Civil Revision Petition is against the order for amendment, on the merits, i.e., on the question

whether the learned Judge has exercised his jurisdiction illegally or with material irregularity. I cannot find that he has been guilty of any illegality or

irregularity. I am not sure that it can be asserted that he used his discretion wrongly.

2. Both parties are temples litigating through their respective trustees. The dispute relates to the boundary between two neighbouring villages

belonging to the two temples respectively. In 1925-26 there were survey proceedings as a result of which the boundary between the villages was

demarcated in the particular way as shown by the survey plan and this decision was notified in the local official gazette. The suit as originally

brought was to question the correctness of a particular portion of the line where the villages touch as to which there had been during the survey

what is called a land complaint which the survey officer decided against the plaintiff temple. The amendment sought was to bring in question other

portions of the boundary line which were demarcated but with respect to which as far as now appears there were no land complaints and

consequently no specific decision except the final decision constituted by the completion of the survey and notified under 8. 12 of the Act of 1923.

According to the Survey and Boundaries Act of 1923 differing in this respect from the former Act of 1897, notices have to be given u/s 9 even in

cases where there is no dispute about a boundary to those who are likely to be affected by the decision. Whether such notices were given in

respect of the portions of the boundary now called in question by the amendment does not appear. But if the plaintiff's allegations about his

ownership and possession of the disputed lands are true-and they must for the present purpose be assumed to be true-it is plain that he would in

the absence of notice have a good ground for not knowing that anything had been decided against him and hence a bona fide ground for asking for

the necessary amendment when it became known. The ground on which the learned Judge has granted the amendment is that the plaintiff's suit

was bona fide brought to set right on behalf of the temple all the errors made during the survey as to the boundary between the two villages and

that the relief was claimed only as to two plots because it was then thought that was all that was decided against the temple. The learned Judge

having taken that view I am not in a position to say that he acted illegally in doing so and if so he was justified in allowing the amendment.

3. It was again pressed as it was pressed before the lower Court that the amendment deprives the defendant of the benefit of the plea of limitation.

That is so, only if a new suit had to be brought in respect of the other portions of the boundary as if it were a new matter. But in the view taken by

the Judge the plaintiff is only asking that the relief originally intended should be accurately and explicitly demanded. In this view the objection raised

by the respondent that this petition is incompetent as the petitioner's advocate in the lower Court has already received the costs so ordered to the

defendant (petitioner) and must be held to have adopted the order does not call for elaborate discussion: see Gadde Venkatarayudu and Others

Vs. Anumolu Chinna Ramakrishnayya and Others, . The petitioner's learned advocate has placed before me the English and Indian Cases referred

to in that decision and rightly pointed out that in every particular case it must be ascertained whether the costs or other benefit accepted by a party is in fact and substance a part of the entire order of which after accepting the part favourable to him, a party puts it beyond his power to attack the rest. To this I agree. But I am not prepared to go so far as to say that the orders to which the doctrine is applied should themselves be the result of an agreement. It is sufficient if by their nature or intention the Court regarded them as an entire whole, giving a benefit in one respect to one party and in another to his opponent, in other words, such that the benefit to one would not have been granted but for the corresponding benefit granted to the other. In this case which was, as shown by the order of the lower Court, one of great doubt to the learned Judge, he after discussing the pros and cons at great length finally allowed the amendment but made payment of costs a condition of granting it. I am of opinion that the Judge would not have granted the costs unless he allowed the amendment and therefore the order comes within the rule. It was then urged that the advocate Mr. C. Doraiswamy Ayyangar who received the costs had not been shown to have authority to bind the defendant by a compromise and so his receipt does not bind the defendant. The question is really not one of any compromise or special agreement. But the advocate in the ordinary course of his employment has undoubted authority to receive costs paid by the other side. The fact, if it is a fact, that the advocate did not realize the consequences of his acceptance of the money, cannot prevent the legal consequences which Courts draw from such an act. The petition fails and is dismissed with costs.