

(1978) 03 MAD CK 0018
In the Madras High Court

Sri Pushpagiri Mutt, by its Peedathipathi Sri Vidya Nrusimha
Bharathy Swamy Varu

APPELLANT

Vs

Ramalinga Sastri and Others

RESPONDENT

Date of Decision : 06-03-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 3 Rule 4, Order 41 Rule 1
Limitation Act, 1963 — Section 22(1)

Citation : (1979) 1 MLJ 54

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—The plaintiff in O.S. No. 4087 of 1969 on the file of the Fourth Assistant Judge, City Civil Court, Madras, is the

petitioner in this revision. The respondents herein are the defendants in that suit. The plaintiff is Sri Pushpagiri Mutt, Cuddappah, Cuddappah

District, Andhra Pradesh. From a perusal of the records in the Court below, certain-essential features of the case do emerge out. An Executive

Officer was appointed for the plaintiff-Mutt by the Commissioner of Hindu Religious and Charitable Endowments (Administration), Andhra

Pradesh, in pursuance of a scheme framed therefor. The plaintiff-Mutt Sled the suit for a declaration of title regarding the property at No. 20,

Ekambareswarar Agraharam, Park Town, Madras, and for possession of the said property. There is no gainsaying that a Mutt, like an idol is a

juridical person and is capable of acquiring, holding and vindicating legal rights through the medium of some human agency, which is ordinarily the

agency of the person in charge of its affairs. It is beyond doubt that ""Sri Pushpagiri Mutt"" is the plaintiff in the suit. However, because an Executive

Officer was appointed and was functioning for the plaintiff-Mutt, at the relevant times, the plaintiff-Mutt was described in the pleadings as follows:

The Executive Officer of Sri Pushpagiri Mutt, Cuddappah, Cuddappah District". This may not be a proper description of the plaintiff-Mutt. The

name or designation of the person representing the plaintiff-Mutt is only secondary. However, the suit on contest by the defendants, on merits was

proceeded with and while it was part-heard was dismissed for default on 4th October, 1971. The application, I.A. No. 17709 of 1Q71, for

restoration was also dismissed by the Fourth Assistant Judge, City Civil Court, Madras. The plaintiff-Mutt filed an appeal, C.M.A. No. 65 of

1972 against the orders in I.A. No. 17709 of 1971, and the same cause title in the suit and in the subsequent proceedings in the suit was adopted

in filing the said appeal, C.M.A. No. 65 of 1972, which was heard and disposed of by the Principal Judge, City Civil Court, Madras, by Judgment

and decree dated 16th August, 1974.

2. During the pendency of the appeal, C.M.A. No. 65 of 1972, the plaintiff-Mutt preferred C.M.P. No. 1013 of 1973 for permission to amend

the cause title by removing the present cause title and inserting the new cause title as:

Sri Vidya Nrusimha Bharathy Swamy Varu, Peedathipathy, Sri Pushpagiri Mutt, Cuddappah, represented by its Manager.

in the plaint as well as in the appeal memorandum. The provocation for this move was found in certain events, which occurred subsequent to the

filing of the suit. It was stated that according to the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, the

scheme framed earlier, became inoperative, and the person to represent the plaintiff-Mutt became the Peedathipathy himself even before the filing

of the said appeal. As noted earlier, the cause title found in the proceedings was adopted in the appeal. The prayer for amendment in C.M.P. No.

1013 of 1973 itself was not properly couched. Once it is remembered that it is ""Sri Pushpagiri Mutt"" which had and has a ""cause"" to be agitated

and vindicate certain legal rights, its representation through one or other human agency cannot be of much significance, and if it is described

wrongly, it is a case of misdescription of parties, which can be corrected by the Court at any time. To complete the narration of events, C.M.P.

No. 1013 of 1973 in C.M.A. No. 65 of 1972, was dismissed by the Principal Judge, City Civil Court, Madras, on 15th July, 1974. A revision,

C.R.P. No. 295 of 1976, was preferred to this Court as against the order in C.M.P. No. 1013 of 1973 and the said revision has been dismissed

by this Court on 11th July, 1977, for not taking steps to serve the respondents therein.

3. The Principal Judge, City Civil Court, Madras, has dismissed C.M.A. No. 65 of 1972 on the reasoning that the Executive Officer of Sri

Pushpagiri Mutt is not competent to maintain the appeal in view of the orders passed in C.M.P. No. 1013 of 1973. The present revision is

directed against the judgment and decree in C.M.A. No. 65 of 1972. The question that comes up for consideration in this revision is as to whether

the Court below is right in dismissing the main appeal itself on the reasoning given by it.

4. There is no dispute that the appeal memorandum in C.M.A. No. 65 of 1972 was signed and presented by the very same counsel, who was also

appearing for the plaintiff-Mutt in the suit. The signing of the memorandum by the pleader would satisfy Order 41, Rule 1 of the Code of Civil

Procedure. Order 3, Rule 4, Sub-rule (2) of the Code of Civil Procedure, as it stood prior to the amendments introduced by Act CIV of 1976,

states that every appointment of pleader filed in Court shall be deemed to be in force...until all proceedings in the suit are ended so far as regards

the client. Sub-rule (3) of the said Rule says that for the purposes of Sub-rule (2)... any appeal from any decree or order in the suit...shall be

deemed to be proceedings in, the suit. Hence the representation of the plaintiff-Mutt for the appeal and the presentation of the appeal by the

counsel who appeared for it in the suit, were competent on the original appointment given to him. It must also be remembered that the suit and the

appeal were on the file of the City Civil Court, Madras, the suit on the file of the Fourth Assistant Judge, City Civil Court, Madras, and the appeal

on the file of the Principal Judge, City Civil Court, Madras. Whatever wisdom prompted the plaintiff-Mutt to file the application, C.M.P. No. 1013

of 1973, seeking the amendment of the cause title in the form it was sought, the granting of the said application would not find a solution for the real

problem. The reliefs claimed in the suit and in the appeal, C.M.A. No. 65 of 1972 are by the plaintiff-Mutt, viz. ""Sri Pushpagiri Mutt, Cuddappah"".

The plaintiff Mutt has to be represented by some person. Instead of filing the suit as ""Sri Pushpagiri Mutt, Cuddppah, represented by the proper

person"", the plaintiff-Mutt has been wrongly described, giving the representative's name and designation in the first place, and stating him to

represent the plaintiff-Mutt. This mistake in the description of the plaintiff-Mutt has crept in the plaint in the suit itself, and has been carried over

and repeated in the appeal memorandum in C.M.A. No. 65 of 1972. As stated above, the prayer, in the application for amendment of the cause

title in C.M.P. No. 1013 of 1973 is not on a better footing, and the dismissal of the said application has not worsened the position.

5. Once it is remembered that it is ""Sri Pushpagiri Mutt, Cuddappah"", which intend to sue in the suit and which alone wants, reliefs in the appeal,

C.M.A. No. 65 of 1972, its wrong description in the sense of its wrong representation or improper representation can always be corrected by the

Court. Any change in the representation of the plaintiff-Mutt due to change of circumstances or subsequent events can be taken note of, and the

plaintiff-Mutt must be allowed to bring in the proper representative on record in the proper representation of the party is a question of description

of the party, and not one of addition of new parties. Neither the description of the plaintiff-Mutt in the appeal memorandum in C.M.A. No. 65 of

1972, which has merely carried over and adopted the description in the suit, nor the description that was sought to be introduced in the

application, C.M.P. No. 1013, is a proper one; and it does not bring to the forefront the patent fact that it is really ""Sri Pushpagiri Mutt,

Cuddappah"" who is the plaintiff in the suit and the appellant in the appeal. Viewed in the above light, and taking into consideration the features of

the case, as disclosed above, there was no warrant in law for the Court below, to dismiss the appeal, C.M.A. No. 65 of 1972, itself on the ground

that C.M.P. No. 1013 of 1973 has come to be dismissed. The appellant is ""Sri Pushpagiri Mutt, Cuddappah"". On the facts disclosed and placed

before the Court, its representation by the Executive Officer, needs deletion and correction. The proper person competent to represent it on date

must be brought on record In Mura Mohideen v. V.O.A. Mohamed ILR (1955) Mad. 1293 : 1 M.L.J. 337 : 68 L.W. 181 : AIR 1955 Maad.

294, a Division Bench of this Court consisting of Rajamannar, C.J. and Rajagopala Ayyangar, J., laid down the law with regard to amendment

arising out of misdescription of parties in the following, terms:

If, however imperfectly and incorrectly a party is designated in a plaint the correction of the error is not the addition or substitution of a party but

merely clarifies and makes apparent what was previously shrouded in obscurity by reason of the error or mistake. The question in such a case is

one of intention of the party and if the Court is able to discover the person or persons intended to sue or to be sued a mere misdescription of such

a party can always be corrected provided the mistake was bona fide. Vide Order 1, Rule 10, G.P. Code. Such an amendment does not involve

the addition of a party so as to attract Section 22(1), Limitation Act.

6. Applying the above principles, I allow this revision and to meet the ends of justice, I direct the petitioner herein to seek the proper amendment

of the proceedings in the Courts below to show "'Sri Pushpagiri Mutt, Guddappah, Cuddappah District, Andhra Pradesh'" as the plaintiff or the

appellant, as the case may be, represented by the proper authority or representative as on date. The Court below will restore the appeal, C.M.A.

No. 65 of 1972 to its file, to hoar the same on merits, after allowing the petitioner herein to amend the cause title in the proceedings as indicated

above, if the application for such amendments is made within a fortnight from the date of hearing of the said appeal to be fixed and notified by the

Court below, on receipt of the records by the Court below. If such an application for amendments is not made by the petitioner herein within the

time given above, the Court below will dismiss the appeal, C.M.A. No. 65 of 1972 for, non-compliance with the directions given by this Court.

Considering the fact that the petitioner herein has not been alert in seeking the proper amendment, the petitioner will pay the counsel for

respondents 1 and 2 herein a sum of Rs. 100 as costs within two weeks from this day.