
(1949) 01 MAD CK 0006
In the Madras High Court

T.R. Govindaraja Mudaliar

APPELLANT

Vs

Saravana Mudaliar and Others

RESPONDENT

Date of Decision : 20-01-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (1949) 62 LW 206 : (1949) 1 MLJ 331

Hon'ble Judges : Balakrishna Ayyar, J; Balakrishna Aiyar, J

Bench : Division Bench

Judgement

Balakrishna Ayyar, J.—The plaintiff is the petitioner. He sued for a declaration that he is the owner of the superstructure bearing door No.

68, Saravanaperumai Mudaly Street, Purasawalkam, as well as of the ground on which the super building stands and prayed for possession of

both the properties.

2. Objection having been taken to the valuation adopted by the plaintiffs, a commissioner was appointed and on receipt of his report, the plaintiff

was directed to pay deficit court-fee amounting to Rs. 202-7-0. Time till the 7th January, 1947, was given to comply with the order. The deficit

court-fee was not paid by that date; instead the plaintiff applied for leave to amend the plaint by substituting a prayer for a declaration that he is

entitled not to the absolute right in the land but only to a leasehold interest in it. The learned Judge in the Court below dismissed the application on

the ground that an amendment of the plaint could not be granted after an order had been made for payment of deficit court-fee. In making this

order, he purported to follow the decision of Kuppuswami Ayyar, J., in an unreported case in C. M.P. No. 6269 of 1945 and the decision in

Midnapore Zamindari, Co. Ltd. v. Secretary of State for India ILR (1916) Cal. 352.

3. I do not think that either of these decisions really applies to the facts of the present case. In C.M.P. No. 6269 of 1945 leave to amend the plaint

was sought in the appellate Court before the appeal had been admitted. The situation there was that the lower Court had ceased to have seisin of

the matter and the appellate Court had not acquired seisin of it. Naturally the appellate Court could grant leave to amend the plaint only after the

appeal had been admitted. Kuppuswami Ayyar, J., observed:

If after the appeal is admitted, she (petitioner) wants to have the plaint amended, then it will be open to her to file a petition which will be heard

along with the appeal.

In Midnapore Zamindari Co., Ltd. v. Secretary of State for India ILR (1916) Cal. 352 what happened was that the additional court-fee not having

been paid within the time granted the plaint was rejected under Order 7, Rule 11, CPC and leave to amend the plaint was applied for only

subsequently, i.e., in the appellate Court. This particular aspect of the matter is not fully brought out in the headnote. The decision in Midnapore

Zamindari, Co. Ltd. v. Secretary of State of India ILR (1916) Cal. 352 has been, distinguished on this ground in another Bench decision of the

same High Court reported in Mt. Saiyadunnessa Khatun and Others Vs. Gaibandha Loan Co. Ltd. and Others, . It was observed:

But in the present Case the prayer for amendment was heard actually before the order rejecting the plaint was made.

So too in the present case the prayer for amendment was made before any order rejecting the plaint had been passed. Under Order 6, Rule 17,

Civil Procedure Code, the Court has sufficient power in appropriate cases to permit amendment of pleading and this power can naturally be

exercised till the plaint is actually rejected.

4. The circumstance that the amendment of the plaint was sought only after the demand of deficit court-fee had been made cannot stand in the way

of the amendment being allowed if it would be otherwise proper. On this aspect of the matter, viz., whether the amendment sought for is proper. I

express no opinion as that will have to be decided in the lower Court.

5. The petition is allowed to the extent indicated above and the case remanded to the lower Court for disposal on merits. The costs of this revision

petition will be costs in the petition.