

(1986) 09 MAD CK 0037
In the Madras High Court

Umsala Bibi and Others

APPELLANT

Vs

M. Jayaraman

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Citation : (1987) 100 LW 664 : (1987) 2 MLJ 18

Hon'ble Judges : Sengottuvelan, J

Bench : Division Bench

Judgement

Sengottuvelan, J.—This civil revision petition is filed by the defendants in the suit challenging the legality and correctness of the order of the XVI Assistant City Civil judge, Madras, passed in I.A. No. 21484 of 1985 in O.S. No. 9297 of 1981 allowing the amendment sought for by the respondent by changing the survey number 120 in the original plaint into 121.

2. The contention of the petitioners is that by changing the survey number, the character of the suit itself changes and as such, the amendment cannot be allowed. In support of his contention the case reported in Angammal Vs. Muthupechiammal Meenal, , is cited. In that case, it has been held that if the amendment amounts to substitution of a relief which is different and not asked for in the original plaint and if under the guise of the amendment a distinct and separate prayer is sought to be introduced, in the pleading, it would not be amendment at all, but it would be setting up a new cause of action, not thought of and not even pleaded by the person concerned and in such circumstances, the amendment will have to be refused. The petitioner also relied upon a case reported in Bhagavatula Gopalakrishnamurthi and Others Vs. Dhulipalla Sreedhara Rao and Another, , where a single Judge of this Court held that where facts are alleged in a proposed amendment of the plaint which facts were available to the plaintiff and which they had not chosen to mention in the original plaint, it would not be open to the Courts to permit such an amendment where it would result in a new case being made out on facts which were available and which were not pleaded.

3. The above decisions lay down the proposition that if, under the guise of an amendment, a new cause of action altogether different from the one mentioned in the plaint, is sought to be introduced, then the amendment has to be refused. We will have to see whether the amendment sought for in this case amounts to introducing altogether a different cause of action from one that was already mentioned in the plaint. In this case, the respondent seeks only to amend the plaint by substituting the survey number 121, instead of survey No. 120 already mentioned. Apart from changing the survey number no fresh pleadings are sought to be added nor the cause of action and the relief claimed are altered. Only certain plaint allegations are sought to be included to explain the change in survey numbers. Under the circumstances the amendment sought for cannot be said to be introducing altogether a new cause of action to the detriment of the petitioners. Hence, the lower Court is right in allowing the amendment and there are no merits in this revision and the same is dismissed.