

(1926) 10 MAD CK 0039
In the Madras High Court

Vasudeva Nayudu

APPELLANT

Vs

Venkalakshmi Ammal

RESPONDENT

Date of Decision : 07-10-1926

Acts Referred:

Citation : AIR 1927 Mad 504

Hon'ble Judges : Odgers, J

Bench : Division Bench

Judgement

Odgers, J.—This is a suit on a promissory note executed by all the 3 defendants. The 3rd defendant was found not to be a partner in the chit fund business carried on by Defendants 1 and 2. His defence was not only that he was not a partner but that he was only a surety in executing the promissory note and that the suit was barred by time. During the course of the trial in the 1st Court the document Ex. B was produced by the 2nd defendant. This evidenced an arrangement between the defendants as to how certain debts of a partnership that existed between Defendants 1 and 2 and the father of the third defendant should be discharged. Ex. B was discovered, according to the plaintiff to contain an acknowledgment of the third defendant's liability which the District Munsif accepted and on which he decreed the plaintiff's suit. On appeal to the Subordinate Judge it was held that Ex. B should not have been allowed to have been set up in this fashion before the District Munsif but that the plaintiff should have applied to amend her plaint because in the original plaint, Ex. B was not relied as saving limitation, that a payment by the third defendant was relied on the ground that he was a partner along with the Defendants 1 and 2 and, therefore, bound them by his act.

2. It is contended by the learned vakil for the petitioner that no such amendment and remand of the suit to the lower Court after such amendment should have been allowed by the appellate Court, and he bases his contention on the fact that by such amendment he is deprived of his plea of limitation existing at the date of the suit. It is undoubtedly true that this contention is not considered by the

learned Subordinate Judge. There is an alternative view and that is that it was not mentioned to him but that the defendants were content after contest to have the amendment allowed, provided their costs were provided for as in fact the Subordinate Judge provided for them. Thirumalasseri Kottayil Sreedharan Valia Rajah styled Churaran of Iswaramangalam Amsham Vs. Parakkat alias Karuthedath alias Parapalli alias Kandarath Illath Karnavan and Manager Kunhunni alias Narayanan Nambudripad and Others, is quoted for the petitioner where I held along with Napier, J., that in a case where undoubtedly the cause of action was changed by an amendment it should not have been allowed because it did deprive the plaintiff in that case of setting up a plea of limitation. I am not quite sure that that applies in the present case because if Ex. B turns out on examination to be what plaintiff says it is, then undoubtedly the plaintiff is well within time in bringing her suit. The real objection is that she did not plead it in her plaint as saving the bar of limitation. The note on its face was barred. The Judge points out that the case was in the hands of a vakil and he should have asked for an amendment in the first Court. He also points out that the document was in the custody of the 2nd defendant and the plaintiff was not aware of it when she instituted the suit but only came to know of it subsequently. There is no doubt that there is no change in the cause of action, nor is it contended that there is.

3. The case in Parthasarathy Ayyangar v. Rangaswamy Aiyangar [1916] 4 M. L. W. 654 is very similar to this though there the plea which the plaintiff desired subsequently to adopt was disclosed in the written statement of the defendant. I do not think that there is any difference between disclosing a fact in the written statement of the defendant and disclosing a fact in a document produced by him. I think, therefore, that the plea as to limitation in this particular case fails and that the Judge was in the circumstances justified in allowing leave to amend on the terms that he imposed. I am not inclined in the exercise of revisional powers to interfere with his discretion.

4. The revision petition is dismissed with costs.