

(1927) 08 MAD CK 0051
In the Madras High Court

(Vedagiri) Seshacharlu

APPELLANT

Vs

(Ovveti) Venkata Subba Row and Others

RESPONDENT

Date of Decision : 03-08-1927

Acts Referred:

Citation : AIR 1928 Mad 828

Hon'ble Judges : Srinivasa Ayyangar, J;Srinivasa Aiyanger, J;Reilly, J

Bench : Full Bench

Judgement

Srinivasa Ayyangar, J.—The only point argued for the appellant in this second appeal is that the plaintiff's application for amendment of the plaint both to the Court of first instance and to the lower appellate Court should have been allowed and not rejected as it has been. The plaintiff-appellant originally instituted the suit from which the second appeal arises really claiming certain inam lands as inam appertaining to the office held by him in the suit temple as archaka and claiming what he referred to as the mesne profits of the property. It is clear from the record that, even at a very early stage in the litigation, he amended the plaint so as to include three alternative prayers. But there was no prayer by him in the plaint that, in the event of the Court holding that he had no right to the property or to the income thereof, he was, at any rate, entitled to be paid by the defendant reasonable wages for his having rendered archaka service in the suit temple. The first time that he made such application for amendment was when the learned Subordinate Judge, on the first occasion it came up before him on appeal, was about to deliver judgment, and the application for amendment was rejected by the learned Subordinate Judge mainly on "the ground that it was entirely a, new cause of action which at that time was barred by limitation and that it; would be inequitable to allow the plaintiff at that stage to amend the plaint and include a prayer really based on an entirely new cause of action. Against the judgment of the learned Subordinate Judge there was a second appeal preferred by this very plaintiff and one of the grounds in that second appeal was that the lower appellate Court should have allowed the amendment applied for. That ground, however, was not pressed before this Court; apparently

the gentlemen who represented the appellant, being satisfied with the decision obtained from this Court with regard to the admissibility of the document, did not regard it necessary to press the ground relating to the amendment of the plaint. It seems also clear that, after remand, the application for amendment was treated in the Court of first instance as having been rejected by the appellate Court, but it was once again made before the Subordinate Judge. The learned vakil for the appellant has not argued the other questions and has confined himself to this application for amendment and argued that, having regard to the great hardship to his client, the application should be allowed now in second appeal.

2. Our attention has been called to the oases reported in *Charan Das v. Amir Khan* A.I.R 1921 P.C. 50, and also *Mohummad Zahoor Ali Khan v. Mt. Thakooranee Rutta Koer* [1867] 11 M.I.A. 468. In both the cases it is perfectly clear that the amendment that was allowed related to the nature of the relief asked for on what was not merely substantially but also in form the same cause of action. In the previous case a mere declaration with regard to the right of pre-emption was asked for and no consequential relief was prayed for. In the latter the relief by way of amendment that was allowed was a relief on the very bond on which the suit was based. In these circumstances, it is impossible to regard either of the said judgments as an authority for the position that in second appeal the plaintiff may be allowed to amend the plaint so as to plead on an entirely different cause of action. Even assuming that it could be done, there are obviously practical difficulties in this case. It will virtually come to allowing the plaintiff to file an entirely new plaint and begin all over again because it is clear that to a plaint so modified the defendant should have an opportunity of pleading, and it is a case in which evidence would also be required to be adduced on both sides. Further, it is one thing to say that the cause of action on which or with respect to which relief is prayed for has been already set out in the suit and ask for amendment on that basis, and another thing to say that he has misconceived the cause of action itself and he should now be permitted to base the suit on an entirely different cause of action. Having regard to the great injustice that would be done to the defendant, should the Court now accede to the request of the appellant and allow the amendment to be effected, we have no hesitation in saying that the application should not be complied with. There can be no doubt whatever that the cause of action for reasonable wages for services performed, and not intended to be gratuitously performed, is entirely different to a cause of action based on certain title to property or income thereof. An appeal was made by the learned vakil for the appellant on the ground that his client had a just claim and that if this amendment was not allowed his claim would be barred by limitation. That may indeed be regarded as a ground really for rejecting the application because if, according to his contention, we should allow the amendment it would be tantamount to allowing the plaintiff to claim relief on a cause of action which according to him, has already become hopelessly barred by the law of limitation. There are also no reasons in this] case

why it should be done. The second appeal is, therefore, dismissed with costs.

Reilly, J.

3. I agree. In my opinion the order of the first Subordinate Judge,. Mr. Sundaram Chettiar, on 18th November 1918, refusing to allow the amendment on the ground that it would have been in effect to allow a new suit to be instituted on a new cause of action, which at that time was barred, was correct. But even if it had been possible to take another view of that order, I do not think that the amendment could be properly allowed at this stage. When the suit was dismissed in the lower appellate Court by Mr. Sundaram Chettiar on that date a second appeal was preferred to this Court, and one of the grounds of that second appeal was that the proposed amendment of the plaint should have been allowed. When the second appeal came on for hearing, that ground was not argued, and the suit was remanded for fresh disposal for other reasons with a direction that it should be tried upon certain issues. After that direction had been given by this Court I do not think it would have been proper for the original Court to have allowed any further amendment of the plaint. In the circumstances it would certainly not be proper for us to allow it here at this stage. I agree that this second appeal should be dismissed with costs.