
(1971) 02 MAD CK 0020

In the Madras High Court

Case No : Civil Revision Petition No. 10 of 1970

Velammal and Others

APPELLANT

Vs

Chokkiah Gounder and Others

RESPONDENT

Date of Decision : 19-02-1971

Acts Referred:

Citation : AIR 1971 Mad 469 : (1971) 84 LW 458 : (1971) 2 MLJ 132

Hon'ble Judges : Raghavan, J

Bench : Single Bench

Judgement

1. The plaintiffs are the petitioners. The suit is by the widow of Velusami Gounder for herself and as next friend of her daughters who are the

second and third plaintiffs for past and future maintenance against her husband who was the first defendant. Subsequent to suit the first defendant

died leaving behind him the petitioners and two sons and his mother as heirs. The sons and mother are impleaded as defendants 7 to 9.

Consequent on the death of the first defendant, the plaintiffs who have a half share in the suit properties filed I. A. 1305 of 1969 for amendment of

the plaint in the altered circumstances seeking to claim partition and separate possession of their half share. The application was opposed by the

third defendant on the ground that the amendment, if allowed, will change the character of the suit as also the cause of action. The trial court upheld

the objection and dismissed the application. The present civil revision petition is filed against the said order.

2. The suit as originally filed was one for maintenance and the cause of action for the suit was the husband's neglect to maintain the plaintiffs. By

reason of the plaintiffs has enlarged giving rise to a claim for partition and

separate possession of a half share as and from the date of the death of the husband. Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of the institution of the suit. But where it is shown that the original relief claimed has by reason of the subsequent change of circumstances become inappropriate or that it is necessary to have a decision of the court on the altered circumstances in order to shorten the litigation or to do complete justice between the parties, it is incumbent upon the court to take note of the altered circumstances which happened subsequent to the filing of the suit. and mould its decree according to the circumstances at the time the decree is made.

3. In the present case, the plaintiffs claimed future maintenance and after the death of the first defendant no decree for maintenance subsequent to the date of his death could be granted as the plaintiffs will be entitled to a higher right namely one of partition. In order therefore to facilitate the grant of a decree and shorten the litigation it is just and necessary that the amendment is ordered.

4. In the Full Bench decision in R.M. Subramaniam Vs. N. Sundaram Iyer, it was held at page 119 as follows:-

Broadly and generally stated, the rule is that the rights of parties have to be determined and pronounced upon as on the date of commencement of the "lis" before the court. This is not however a stubborn or inflexible rule and it has to give way in instances where, unless the subsequent events are considered and taken into account, grave injustice would result or the decision of the court would become a mockery. A spouse applies for restitution of conjugal rights. During the pendency of the proceeding, the marriage is dissolved by a decree of competent court. The court dealing with the restitutorial application is bound to have regard to the altered circumstances. A landlord sues to evict his tenant on the ground of forfeiture of lease. Before the suit is tried, the term of the lease expires. The court can take notice of this circumstances and grant relief. It would be pedantry to multiply instances. The discretion of the court, under its inherent powers, to adjust the rights of parties on the basis of events happening after the starting of the action, is well recognised and accepted as a rule of justice, equity and good conscience. In some cases, it is almost the duty of the court to advert to subsequent events brought to its notice lest it should fail to do

substantial justice between the parties.

5. In *Mettu Bhimudu Vs. Duggirala Pitchayya and Others*, Yahya Ali, J. had to consider the need for amendment of the plaint arising after the filing

of the plaint. The headnote in the said decision brings out the position:

The plaintiff alleged in his plaint that he was adopted by his uncle defendant 1 who on the advice of his daughter was attempting to alienate the

properties belonging to the joint family of the plaintiff and defendant 1. Plaintiff, therefore, asked for the partition of his share and separate

possession thereof and for other consequential reliefs. Subsequent to the institution of the suit and before service of summons, defendant 1 died

and his widow and daughter were brought on record as defendants 3 & 4. They set up a will executed by defendant 1 in their favour and claimed

all the properties. Consequent on the death of defendant 1 and in view of the will set up, the plaintiff in order to ask for reliefs appropriate to the

altered situation sought to amend the plaint by asking for possession of the entire properties for declaration that defendants 3 and 4 had no right to

the properties and that the will set up by them was not genuine.

Held: that the necessity for the amendment arose out of the circumstances which happened after the filing of the suit, namely, the death of

defendant 1. It was a necessary and just development of the original case that the plaintiff should ask for possession of the entire property on the

strength of his alleged right of adoption. There was no alteration or variation of the fundamental character of the suit nor was it a case

where one cause of action had been substituted for another. The amendment did not cause any prejudice to the defendants. Hence the amendment

of the plaint should be allowed." The courts have allowed amendments to meet the ends of justice based upon the cause of action not subsisting at

the time of the suit but arising subsequent thereto to shorten litigations and subsisting the ends of justice. The order of the lower court refusing the

amendment is set aside and the revision petition is allowed. The amendment prayed for is granted. The defendants will be entitled to file their

additional written statements. There will be no order as to costs.

6. Petition allowed.