



CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4052 of 2001@@  
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N. Lakshmi Ammal (Dead) and Ors. ... Appellant (s)

Vs.

K. Seshadiri ... Respondent (s)

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The appellants herein brought a suit for declaration of their title and permanent injunction restraining the defendant-respondent herein from interfering with the possession and enjoyment of the suit property. The trial court, while partly decreeing the suit, held that the appellants have title with respect to the suit property. However, the suit, to the extent it related to injunction, was dismissed as the defendant-respondent was found to be in possession. Aggrieved, the appellants preferred an appeal before the first appellate court. The respondent also filed a cross appeal to the extent the trial court held that the plaintiff-appellants have title to the property. During the pendency of the appeals, the appellants moved an application under Order 6 Rule 17 of the Code of Civil ...2/-

Procedure, 1908, for amendment of the plaint. By the said amendment, the appellants prayed for recovery of possession. The said application for amendment was allowed subject to the payment of cost. It is not disputed that the cost, as awarded by the appellate court, was deposited by the appellants. Subsequently, the appeal as well as the cross objection came up for hearing before the first appellate court. The first appellate court dismissed the appeal preferred by the appellants, whereas the cross objection filed by the defendant-respondent was allowed. With the result the suit stood dismissed in its entirety. The appellants thereafter preferred a second appeal under Section 100 of the Code of Civil Procedure, 1908. However, the said appeal was dismissed on the ground that the defendant-respondent has failed to prove his adverse possession. In view of the aforesaid peculiar finding recorded by the High Court in the second appeal, the appellants filed a review petition before the High Court. The review petition was allowed by the High Court. Against the said order of the High Court allowing the review petition, the respondent herein filed a civil

appeal by means of the special leave petition. This Court was of the view that since the respondent was not ...3/-

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given opportunity of hearing before the review petition was allowed, the order was set aside and the matter was remitted to the High Court for decision afresh on the review petition filed by the appellants. It appears that, on remand, the High Court again re-heard the matter and rejected the review petition on the ground that the amendment allowed by the first appellate court did not relate back to the date of filing of the suit i.e. in 1978 and, therefore, the defendant-respondent has acquired title by adverse possession. It is against the said judgment in review petition, the appellant is in appeal before us.

We have heard counsel for the parties and are of the opinion that the view taken by the High Court in rejecting the review petition was patently erroneous.

This Court in the case of Sampath Kumar Vs.@@  
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Ayyakannu and Anr. - 2002 (7) SCC 559, held as follows:@@  
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"10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have ...4/-

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been brought before the court on the date on which the application seeking the amendment was filed. (See observations in Siddalingamma Vs. Mamtha Shenoy.)"

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In the aforesaid legal position, it must be held that once the amendment of plaint has been allowed, the

said amendment would relate back to the institution of suit. It may be noted that at no point of time, the defendant-respondent challenged the order allowing amendment of the plaint and it is not open to him at this stage to challenge the said order. We, therefore, decline to entertain the said argument. Since the amendment of plaint relate back to the date of filing suit, the relief for recovery of possession was well within limitation. In that view of the matter, the judgment under challenge is set aside and the matter is remitted to the High Court to decide the review petition filed by the appellants in accordance with law.

The appeal is allowed. There shall be no order as to costs.

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(AR. Lakshmanan) @@  
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New Delhi,  
February 19, 2003.