

**N. Vaithianathan Vs. the Union of India Represented by the General Manager,
South Indian Rly**

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South Indian Rly**

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Court : Chennai

Decided On : Nov-07-1950

Reported in : AIR1951Mad658a; (1951)IMLJ84

Judge : Chandra Reddi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 6, Rule 17

Appeal No. : Civil Revn. Petn. No. 1299 of 1950

Appellant : N. Vaithianathan

Respondent : The Union of India Represented by the General Manager, South Indian Rly

Advocate for Def. : S.S. Ramachandra Iyer, Adv.

Advocate for Pet/Ap. : M.S. Venkatarama Iyer, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Chandra Reddi, J.

1. The petnr herein filed a petn in the Ct of the Subordinate Judge, Tiruchirapalli, for permission to sue 'in forma pauperis' the deft, for damages in a sum of Rs. 14000, for wrongful dismissal. The suit, as originally framed, described the deft as 'The South Indian Railway, by the Governor General in Council, represented by the General Manager'. Subsequently he filed an appln to change the cause title by describing the deft as 'The Dominion of India, owning the South Indian Rly represented by its General Manager'. Subsequently on the new Constitution coming into force he filed another appln to change it into 'The Union of India, represented by the General Manager, South Indian Rly.'

2. This appln was opposed by the Union of India mainly on the ground that the pltf by his amendment was seeking to implead a new party in the place of a deft, who ceased to be a legal entity on 1-4-1944, after the lapse of the statutory period of limitation. This objection prevailed with the Subordinate Judge, Tiruchirapalli, who thought that originally the suit was sought to be filed against the South Indian Rly Co, represented by the Governor General in Council, while the present petn is to implead the Dominion of India, which is altogether a different entity. I am afraid this conclusion is the result of a misunderstanding of the description of the deft as given in the original petn for filing the suit 'in forma pauperis'. It was not the South Indian Rly Co that was originally impleaded, but it was the South Indian Rly by the Governor General in Council, represented by the General Manager, which means the Governor General in Council, owning the South Indian Rly. represented by the General Manager. Therefore there is no substance in the contention advanced on behalf of the resp herein that a new party is sought to be impleaded by this amendment. The party, as described in the original petn is the same as the party mentioned in the application for the amendment of the cause title. The pltf now only seeks to describe the deft correctly, having regard to the form in which the suit ought to be filed against the Union of India.

3. It is only due to a misconception that a wrong person was sued originally and that, by an amendment, substitution of parties was sought, that the lower Ct refused to permit the pltf to change the description of the deft. No doubt, it is entirely within the discretion of the trial Ct to allow or not the amendmentsof the pleading and if the discretion is exercised properly, this Ct will be reluctant to

interfere with that order. But where the Ct refused to exercise that jurisdiction on a misunderstanding of the real position in the case, this Ct ought to set it right. The application for amendment would have had a different result, if only the trial Judge had realised that it was only the South Indian Railway Administration that was being sued, however, described, and it was the wrong description thereof that was sought to be corrected. A Ct ought to permit a pltf in the normal circumstances to amend the cause title by furnishing the correct description of the deft & there are absolutely no grounds for not according that permission in this case. In refusing to do so, the trial Ct failed to exercise a judicial discretion. I think that in the interests of justice and for the determination of the real question in controversy, the amendment sought for should be allowed.

4. I therefore set aside the order of the trial Ct, and direct it to permit the pltf to amend the cause title as prayed for. In the circumstances of the case I make no order as to costs.

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