

**A.T. Mathavan Vs. S. Natarajan**

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**SooperKanoon Citation :** [sooperkanoon.com/796369](http://sooperkanoon.com/796369)

**Court :** Chennai

**Decided On :** Jan-19-1988

**Reported in :** (1988)1MLJ377

**Appellant :** A.T. Mathavan

**Respondent :** S. Natarajan

**Advocate for Def. :** Mr. T.M. Rangarajan

**Judgement :**

ORDER

**S. Nainar Sundaram, J.**

1. Considering the limited scope of a controversy in this revision, and as well as the fact that the revision arises out of a suit of the year 1979, the revision itself has been taken up for final disposal today.

2. The defendant in O.S. 286 of 1979 on the file of the District Munsif, Mannargudi, is the petitioner in this revision. The respondent herein is the plaintiff. The plaintiff initially laid the suit for injunction in respect of a lorry. The title to and possession of the suit lorry claimed by the plaintiff was denied by defendant in his written statement. The plaintiff would complain that the defendant took possession of the suit lorry in spite of an order of temporary injunction, which was subsisting then, and he wanted amendment of the plaint seeking the reliefs of declaration of title to

the suit lorry and recovery of possession in case the Court should find possession with the defendant. The plaintiff also wanted amendment of the value of the suit as a consequence of the reliefs sought to be introduced by way of amendment. The defendant objected to the amendment, but that objection has been overruled, and the Court below has allowed the amendment sought for by the plaintiff. This revision is directed against the orders of the Court below.

3. Mr. T.M. Rangarajan, learned Counsel for the defendant, would submit that by allowing the amendment the jurisdiction of the Court below stood ousted, and the Court below should not have allowed the amendment, ousting its jurisdiction. It is true that by virtue of the amendment allowed by the Court below, its jurisdiction stood ousted. The submission of the learned Counsel for the defendant that the Court should not allow amendment, which would oust its jurisdiction, cannot be countenanced if I take note of certain principles governing such amendments. Until the amendment is allowed, it is only the Court which has entertained the plaint earlier that must decide all incidental questions, arising in the Lis, including the question of allowing or disallowing the amendment of the plaint, the Court which entertained the plaint loses its jurisdiction, the proper course would be for the Court to return the plaint for presentation to the Court, which would have jurisdiction to entertain the suit as per the amended plaint. There is a suggestion that the Court must return the plaint along with the application for amendment for presentation to the proper Court, which would have jurisdiction to entertain the suit, if the application for amendment is to be allowed. This suggestion may prove to be an unworkable one; the reason being if the Court to which the plaint is directed to be presented on return declines to allow the amendment, then the plaint will have to come back to the Court, which returned it. As already noted, until the plaint is amended by virtue of which the Court which entertained it originally loses its jurisdiction, there is no question of returning the plaint for lack of jurisdiction and for presentation to the proper Court having jurisdiction. In *M. Allauddin v. P.S. Lakshminarayanan* : AIR1970 Mad247 , Veeraswami, J. (as he then was), analysed the relevant case law on the subject, and the learned Judge observed as follows:

The Court below is the Court properly in seisin of the plaint as it is and it is only as and when the amendment is allowed, the question would arise whether that Court could try the suit having regard to the enhanced valuation of the suit property for purposes of court-fee and jurisdiction. In my view, the right course to adopt in such a case is to allow the amendment, grant an opportunity to the plaintiff to pay the deficit court-fee and if there is any question about pecuniary jurisdiction arising, examine the matter and if necessary in the light of a report to be called for from a Commissioner and on a definite finding on that question, to decide whether the plaint should be retained or will have to be returned to the plaintiff as one in excess of the pecuniary jurisdiction of that Court.

The learned Judge adverted to the pronouncement which seemed to take slightly a different view, including the one in *Nagutha Md. Nainar v. Vedavalli Ammal* (1959)1 M.L.J. 307, and distinguished them by advancing the reasoning extracted above. In *M. Ramayamma v. Kamalakare* : AIR 1983 AP11 , Ramachandra Raju, J. of the High Court of Andhra Pradesh, chose to follow the view of Veeraswami, J. (as he then was) in *M. Allauddin v. P.S. Lakshminarayanan* : (1969)2MLJ239 . The learned single Judge of the High Court of Andhra Pradesh observed as follows:

When the suit which was originally filed could be tried by the District Munsif, it is only the District Munsif that is competent to decide whether the amendment applied for should be allowed or refused on merits. The consideration as to whether subsequent to the amendment the District Munsif would still continue to have pecuniary jurisdiction does not arise at that stage. If as a result of the amendment the suit valuation exceeds the pecuniary jurisdiction of the District Munsif, he would naturally return the plaint for presentation in the proper Court. It will not therefore be right for the District Munsif to refuse the amendment merely on the basis that if the amendment is allowed, the suit would be beyond his pecuniary jurisdiction.

In *Benisham v. Mahadeo* : AIR1985 Bom462 , the question arose before V.A. Mohta and M.S. Deshpande, JJ. as to whether the proper course should be to allow the amendment and to return the amended plaint to the plaintiff for

presentation to proper Court or to return the plaint along with the amendment application to be presented to proper Court. The learned Judge opined that the latter alternative has the potentiality of leading to grave injustice, and the reasons expressed by them run as follows:

This leads us to examination of the possible objections to the grant of such application. Return of plaint for presentation to proper Court is governed by Order 7, Rule 10, C.P.C. Till that stage arrives, the Court having jurisdiction over the suit as originally presented is empowered to deal with it as per Ors. 4, 5 and 6, C.P.C. respectively relating to institution, issuing and service of summons and pleadings. We fail to see as to how exception could be made only with relation to a particular amendment by virtue of the only consideration that if allowed, it may result in the ouster of jurisdiction of the Court allowing it. The full plaint (as amended) alone can indicate the jurisdiction. Unless the stage of amendment becoming effective is reached, it would be plainly premature to exercise powers under Order 7, Rule 10, C.P.C. It is plain that initial jurisdiction inheres until something supervenes which ousts it.

4. Only on the amendment being allowed, the jurisdiction which the Court initially had gets lost. Only after that contingency happens, the question of returning the plaint for presentation to proper Court would arise. If the amendment sought for is to be disallowed, certainly the plaint as it was presented has got to be prosecuted. The other possibility of the Court to which the plaint along with the amendment application is to be transferred, rejecting the amendment application cannot be ruled out, and in such a case, the plaintiff will be in a quandary. That should not be the result of the exercise of powers by the Courts on the question of amendment. Hence the Court which originally entertained the plaint can certainly decide the question of amendment even though by allowing the amendment, it may lose its jurisdiction, and as a result of it, the plaint may have to be returned for presentation to the proper court, having jurisdiction as per the amended plaint. In this view, I am not able to sustain the contention put forth by Mr. T.M. Rangarajan, learned Counsel for the defendant.

5. However, learned Counsel for the defendant would submit that the amendment sought for was highly belated and the plaintiff even though the suit was listed for trial on a number of occasions, allowed the suit to be dismissed for default for more than once. If in fact, the plaintiff has got title to the suit lorry, and if he could claim possession thereof in the alternative, from the defendant, I do not want to shut out the rights of the plaintiff on the ground of delay, and the other features pressed forth by the learned Counsel for the defendant; but at the same time, I find that the plaintiff should be mulcted with appropriate costs for laches on his part. Accordingly, the plaintiff is directed to pay the defendant costs of Rs. 500 within a period of four weeks from today, and if so paid, the orders of the Court below will stand confirmed. If, on the other hand, the costs as aforesaid is not paid, the orders of the Court below will stand set aside. If the plaintiff pays the costs to the defendant as aforesaid, the Court below by virtue of the confirmation of its order will return the plaint to the plaintiff for presentation to the proper Court, if not already done. This revision is ordered in the above term. There will be no order as to costs in this revision.