

**R. Lucas Vs. Jayachandra**

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**SooperKanoon Citation :** [sooperkanoon.com/803386](http://sooperkanoon.com/803386)

**Court :** Chennai

**Decided On :** Feb-26-2001

**Reported in :** II(2002)ACC362; (2001)2MLJ307

**Judge :** M. Karpagavinayagam, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rule 10 - Order 11, Rule 10; [Limitation Act, 1963](#) - Sections 21, 21(1) and 22

**Appeal No. :** C.R.P. No. 254 of 1998 and C.M.P. No. 1252 of 1998

**Appellant :** R. Lucas

**Respondent :** Jayachandra

**Advocate for Def. :** R. Meenal for Hema Sampath, Adv.

**Advocate for Pet/Ap. :** V. Lakshminarayanan, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

1. The order impugned allowing the application filed by the first respondent herein permitting her to implead herself as a second plaintiff is under challenge in this revision filed by the defendants/petitioners herein.

2. A.K.V. Nityanandam, the second respondent herein filed a suit claiming damages caused to his vehicle in the fire accident, that occurred on 16.8.1994 in O.S.No. 398 of 1996. The defendants resisted the suit on various grounds by filing written statement.

3. After the commencement of trial and while the plaintiff was examined and cross-examined as PW1, Jayachandra, the wife of the plaintiff, the first respondent herein filed an application in I.A. No. 2600 of 1997 to implead herself as second plaintiff in the suit claiming that she is the owner of the vehicle.

4. The said application was resisted by the petitioners on the ground that such an application cannot be maintained, especially, the period of limitation was over.

5. However, the trial Court, after hearing the counsel for the parties, allowed the application. Hence, this civil revision petition by the defendants/petitioners.

6.1 have heard Mr. Lakshminarayanan, learned counsel appearing for the petitioners and Ms. Meenal, the learned counsel appearing for the respondents.

7. On a perusal of the records and in the light of the submissions made by the counsel for the parties, I am of the view that the order in challenge is not sustainable in law and therefore, the same has to be set aside. The reasons for the same are as follows :-

(1) The suit for damages was filed only by Nityanandam as the plaintiff claiming that the Hero Honda motorcycle, belonged to him, was damaged in the fire accident. It is clear that the said Nityanandam did not file the suit for himself, but on behalf of his wife, the first respondent herein. Right from the date of the notice, the plaintiff has been contending that it is his Hero Honda motorcycle that was said to have been damaged. The suit was filed on 20.9.1995. The written statement was filed on 30.7.1996. After the matter was posted in the list, the trial had commenced. Plaintiff was examined as PW1. He was examined both in chief and cross and at that stage, the wife of the plaintiff Jayachandra, the first respondent as herein filed an application on 8.9.97 under Order 11, Rule 10 of the CPC praying for the order that she may be impleaded as a second plaintiff in the suit, as

the vehicle belonged to her. Thus, it is clear, a new case has been projected by the plaintiff by allowing his wife to file the application to implead her as second plaintiff. According to her, the suit was filed by her husband for himself and on behalf of her the wife. This is neither mentioned in the plaint nor spoken to by PW 1 in his desposition. Therefore, there is no valid reason given in the application to implead her as second plaintiff in the suit, especially, when the plaintiffs consistent stand was that the vehicle belonged to him. Only during the course of cross-examination, it was culled out from PW I that the vehicle is in the name of his wife, the first respondent herein. Thus, it is clear that in order to overcome the difficulty, now his wife has been set up to file the application to cure that illegality.

(2) Secondly, as correctly pointed out by the learned counsel for the petitioners, the application had been filed after the period of limitation was over. Section 21 of the Limitation Act would provide as follows:-

'(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party; Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.'

8. As referred to in the trial Court order, the Supreme Court would hold in Ram Prasad v. Vijayakumar, that the Court has power to add a new plaintiff, at any stage of the suit and in the absence of a statutory provision like Section 22, the suit would be regarded as having been commenced by the new plaintiff at the time when it was first instituted. The rigour of the law has been mitigated by the proviso to Section 21(1) of the Indian [Limitation Act, 1963](#) which enables the Court on being satisfied that the omission to include a new plaintiff or a new defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

9. In the light of the above provision and the above observation made by the Supreme Court, unless it is established that the failure for impleading the party as a second plaintiff is purely a mistake made in good faith, Section 21(1) of the

Indian Limitation Act will not apply. In other words, it can be held that the application to implead the first respondent as second plaintiff in the suit is hopelessly barred by limitation.

10. In the present case, there is nothing to indicate that the mistake in not impleading the second plaintiff in time was bonafide. Moreover, the first respondent imputes bona fide on her part alone and not that of the original plaintiff, the second respondent herein. Thus, it is clear that there is not only the bonafide was not established by the proposed plaintiff, but also no attempt had been made by the original plaintiff to prove that the mistake committed by him was bonafide.

11. As noted above, the plaintiff/second respondent was examined as PW1. He was confronted as regards the ownership of the vehicle. In the cross-examination, the plaintiff admitted that he is not the owner of the vehicle. Only thereafter, at the instance of the plaintiff, his wife filed the application on 8.9.97 claiming that she is the owner of the vehicle. On the date of the application to implead herself as second plaintiff, more than three years had elapsed.

12. The decision cited by the learned counsel for the respondents in Karuppasamy and Ors. v. C. Ramamurthy, , would not be of any help to the respondents, since in that case it is held that the court must on proof be satisfied that the motion to include as an additional party was just and proper, and a mistake having occurred in not making the said party to the party to the suit filed earlier was bonafide and in good faith.

13. The principle laid down in the said decision would not be of any help to the first respondent, since as detailed above, the moving of this application belatedly in this case shall be held to be not bonafide.

14. Under those circumstances, the order impugned is set aside and the Civil Revision Petition is allowed. No costs. Connected C.M.P. is closed.