

**ibramsa Rowther Vs. Muhammad Esuf Rowther**

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**Court :** Chennai

**Decided On :** Apr-24-1929

**Reported in :** AIR1930Mad322

**Appellant :** ibramsa Rowther

**Respondent :** Muhammad Esuf Rowther

**Judgement :**

**Walsh, J.**

1. This is a revision petition against the order of the Subordinate Judge of Tiruvarur allowing an amendment of the plaint in A.S. No. 68 of 1925, which came up before him on appeal from O. S. No. 309 of 1923, before the District Munsif of Tiruvarur. The suit was to redeem certain properties in the possession of the defendant. The plaintiff's case was that he purchased this property from one Subbiah Pillai under a sale deed dated 9th October 1923 (Ex. B.) and that this Subbiah Pillai was the reversioner to the estate of one Veera Pillai, whose widow had enjoyed the property after her husband's death and had executed the mortgage-deed in question. The defendant set up the case that he had purchased the property from one Swaminatha Pillai the great-grandson of Veera. Pillai's grandfather. From the genealogical tree filed by the plaintiff, it was obvious that his vendor, Subbiah (P.W. No. 4) was one degree more remote from the last male-holder, Veera Pillai, than two other persons Ramasami and Ayya Pillai mentioned

therein. The evidence of P.W. No. 3 was to the effect that Ramasami was the nearest agnate at the death of Veera Pillai's widow, Muthachi and that he performed the obsequies at her death, and P.W. No. 4 the vendor expressly stated that he himself did not assert his rights at Muthachi's death, because Ayya Pillai, a preferential heir was alive. The trial Court disbelieved the relationship of the defendant's alleged vendor, Swaminatha Pillai, and gave the plaintiff a decree, from which an appeal was preferred to the Subordinate Judge. It does not appear to have been argued before the District Munsif, though it was perfectly clear from the genealogy filed by the plaintiff and from the evidence of P. Ws. 3 and 4 that plaintiff's vendor, Subbiah Pillai was not the next reversioner to Veera Pillai, the last male-holder of the property. On this point being taken in appeal, the plaintiff asked for leave to amend his plaint to show that Subbiah Pillai got his title from Ayya Pillai and Ramasami. This was allowed and the present revision petition is against the order allowing the amendment.

2. It is argued that the effect of the amendment is to allow the plaintiff to set up a new case in contradiction to that set out in the plaint. It is argued on the other side that the amendment is merely giving a more detailed account i of how the plaintiff's vendor, Subbiah, acquired his title. It should be noted that in the plaint Veera Pillai is distinctly stated to be the last male holder and the recital in the sale deed by Subbiah Pillai to the plaintiff is that the vendor, Subbiah Pillai, is the next reversioner. These are perfectly specific terms the meaning of which is well-known and it seems to me that it is to change both the plaintiff's title and cause of action to say now that Veera Pillai was not the last male holder nor Subbiah Pillai his next reversioner. Although the Code of 1908 has given greater latitude with regard to the amendment of plaints, the Privy Council ruling in *Gopee Lal v. Sree Chandrolee Buhooji* I.A. Sup. Vol. 131 has not been affected. Their Lordships there laid down that they cannot:

depart from the rule which has always prevailed that a man must recover according to his allegations and his proofs. It would not enable their Lordships to allow... an entirely new case to be now brought forward before them, which is not even set up or hinted at in the plaint.

3. On behalf of the petitioner, Pethasari v. Sendamarai Ayi [1911] 8 M.L.T. 284 and Maung Tha So v. Maung Lu Pe [1917] 11 Bur. L.T. 246 were quoted. In the former of these, it was held that the plaintiff who had claimed certain property under the title of a widow's estate could not change that title into one of the widow's sridhana property. In Maung Tha So v. Maung Lu Pe [1917] 11 Bur. L.T. 246 it was held that the plaintiff who set up title as a son adopted krittima could not change that into a title as a son adopted a patittha. On the other side are quoted L.P.A. No. 112 of 1925 26 M.L.W. S N 92 decided 22nd November 1927 and B. Satyanarayana v. S. Venkata Tirumala A.I.R. 1925 Mad. 794. The facts in the latter case are not given, I have carefully perused the judgment, which I have called for in the former case and I think it is distinguishable from the present. In that case, plaintiff 1, who claimed the properties, alleged that they belonged to one Vasu Pattar who died leaving three daughters, that at the time the last of the daughters died, plaintiff 1's father was the nearest reversioner alive and that on his death he himself and defendants 9 to 11 became entitled to the properties. The contesting defendants 1 to 4 alleged that at the time the last of, the daughters died, the reversioner was not plaintiff 1's father but the plaintiff 1 himself together with defendants 9 to 11 and two other persons from whom defendant 1 had taken an assignment of his rights. These two persons applied to the Court to be made parties. They claimed that they were also reversioners but denied having assigned their rights to defendant 1. Issues were raised and the suit was tried on the merits and it was decided that plaintiff and defendants 9 to 11 were not exclusively entitled to the property but that plaintiff, defendants 9 to 11 and defendants 12 and 13 were the reversionary heirs. On appeal, the learned District Judge considered an amendment of the plaint was necessary but subsequently he came to the conclusion that an amendment should not be allowed and, therefore, reversed the first Court's decree and dismissed the suit. An appeal against his decision having been dismissed, the matter came up, on Letters Patent Appeal. Their Lordships held that from the time when the two persons mentioned as additional reversioners by defendants 1 to 4 were added as defendants 12 and 13, the suit should be treated as one relating to the estate of Vasu Pattar and not to the estate of plaintiff's father and that as a fact it was so treated by all the parties and tried as such and that the only question before the Court was whether the plaintiff was

entitled to the larger share that he in the first instant claimed or only to the lesser share, if defendants 12 and 13 should also be allowed to participate in the property. They also found that the suit was not liable to be dismissed, because no formal amendment of the plaint had been made. The point whether the present suit must be dismissed, if the plaint is not amended, is not before me and I am only concerned with the question whether the amendment should have been allowed. It appears to me that this case reported in 26 L.W. Short Notes, p. 92. is a peculiar one and different in several vital respects from the present suit. In the first place the plaintiff was in that case on the contentions raised by the defendants themselves a direct reversioner on Vasu Pattar's death. His admitted title was actually a more direct one than that which he set up. In the second place, the Court found that, from the time when defendants 12 and 13 were added the suit related to the estate of Vasu Pattar and not of plaintiff's father. These elements are altogether wanting in the present case. The plaintiff derives his title solely from his vendor Subbiah Pillai. It is not for me to say here whether he can succeed on his plaint if unamended. It is not the point before me, but when it is argued that he might simply have claimed from Subbiah, without detailing the latter's title it is almost certain that the defendant would in that case have called for specific information as to Subbiab's title.

4. The plaintiff cannot have a better title than his vendor. If Subbiah had filed the suit, as the next reversioner to Veera Pillai, it seems to me perfectly clear that he must have been non-suited as the genealogy filed and the evidence would show that he was not the next reversioner. This differentiates the case entirely from that in 26 L.W. S.N. 92. where the plaintiff was actually the next reversioner himself and not his father through whom he claimed. To allow an amendment of this sort would, I think, open the door to most dangerous consequences. It happens in this case that it is the genealogy filed by the plaintiff himself and the evidence of his own witnesses which shows that his vendor is not the next reversioner to Veera Pillai as, he states, and it is also true that the defendant's case has not been believed by the trial Court. Nevertheless, it is difficult to see if an amendment of the plaint were allowed in a case like this, how it could be refused even where the existence of a nearer reversioner than the person through whom the plaintiff claimed title had been proved by the defendant. Even in the present case

supposing it were proved in trial after the amended plaint that the plaintiff's vendor Subbiah never succeeded even to the two nearer reversioners, would it be open to the plaintiff then to ask for a fresh amendment of the plaint to show that his vendor Subbiah, had title to the property through adverse possession or in some other manner? I am of opinion that the proposed amendment distinctly alters the cause of action and that it is not correct to say that it merely supplies additional details. I do not think therefore, that it should have been permitted. The High Court will interfere in revision in a matter of procedure where the Court has acted with material irregularity by granting leave to amend a plaint, where such leave should not have been granted: vide Prem Das v. Gokal Chand A.I.R. 1927 Lah. 71.

5. The revision petition will be allowed with costs and the order allowing the amendment of the plaint set aside.

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