

**Narayanan Chettiar and ors. Vs. Suppiah Chettiar and anr.**

**Narayanan Chettiar and ors. Vs. Suppiah Chettiar and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/815057](http://sooperkanoon.com/815057)

**Court :** Chennai

**Decided On :** Oct-25-1927

**Reported in :** AIR1928Mad402

**Appellant :** Narayanan Chettiar and ors.

**Respondent :** Suppiah Chettiar and anr.

**Judgement :**

**Devadoss, J.**

1. This is an application to revise the order of the Temporary Subordinate Judge of Devakotta allowing an amendment of the plaint at the instance of the plaintiffs-respondents herein. The plaintiffs and defendants are Nat-tukottai Chetties and the plaintiffs' suit is for dissolution of partnership and other incidental reliefs. The plaintiffs got leave to amend the plaint more than once and on the third occasion they asked leave to amend the plaint by including a relief as regards a firm at Kolalampur, Straits Settlements. The contention of Mr. Rangachariar, for the petitioner, is that the plaintiffs abandoned their claim, if any, in respect of the firm at Kolalampur and they should not now be allowed to include a claim which they deliberately abandoned and secondly that this amendment introduces a new cause of action which would materially prejudice the defendants in their defence and therefore the amendments should not be allowed. The plaintiffs are father and son. Plaintiff 1 is the brother's son of defendant 1. The plaintiffs and defendants

are a family of Nattukottai Chetties carrying on business in Burma and other places. The plaintiffs ask for dissolution of partnership of the firm in Burma. I suppose by 'firms' they mean the business in Burma and with regard to the business at Kolalampur they state in paras. 9 and 10 of the plaint that monies belonging to the partnership were utilized at Kolalampur and therefore they are entitled to be paid back the amount with interest and certain profits. This allegation was no doubt repeated in paras. 9 and 10 which were reproduced in the two amended plaints filed by the plaintiff. In March 1927 they applied for leave to amend their plaint by including a relief with regard to the firm at Kolalampur and this amendment the learned Temporary Subordinate Judge allowed.

2. Now the question is whether the plaintiffs abandoned their claim to relief, if any, in respect of the Kolalampur firm. As I read paras. 9 and 10 of the plaint, I cannot find any words in them to show that they abandoned any claim which they had. What they stated in para. 9 of the plaint was:

The plaintiffs have no concern or share in the Kolalampur firm referred to in the said reply notice. The plaintiffs believe that defendants 1, 3, and i have set up that firm without the permission of and without any reference to either plaintiff 1 or anyone else acting for plaintiff 1.

3. If the plaintiffs did intentionally or knowingly abandon their claim or any portion of it, no doubt it will not be proper for the Court to allow that claim to be brought into the action very lightly but where the plaintiffs did not give up their claim, but only stated that they had no concern with the partnership at Kolalampur, it cannot be said that they gave up anything which they had. The matter is rendered simple by the fact that defendant 1 himself in his notice sent so far back as 8th September 1924 stated that the Kolalampur business was a part of the business of the family of which the plaintiffs were members. No doubt plaintiff 1 repudiated his share in the partnership by a notice dated 19th November 1924. He did not give up his right. What he said was that it was not a partnership business belonging to the family, but owing to reasons which it is unnecessary for me to detail, he has now chosen to include a relief in respect of that firm. The question is whether the learned Judge has acted without jurisdiction in granting prayer for amendment or

acted with material irregularity in granting it. I cannot find either of them in the order made by the learned Judge. Issues have not been settled in the case and the case is only in its early stages. That being so, it cannot be said that the defendants would be prejudiced by granting the amendment prayed for. It would be so at a stage when the case closed or a good deal of evidence on both sides has been adduced.

4. What the defendants contend is that they have by virtue of the notice dated 19th November 1924 taken into the partnership certain persons and a dissolution of the partnership that is being carried on at Kolalampur would materially affect the interests of those partners and therefore the amendment should not have been allowed. But this is a matter which will have to be tried in the course of the suit. At present the Court is not in a position to say whether any persons were taken into the partnership subsequent to November 1924, or what arrangements were made with regard to the partnership assets before that date. That being so, it is unnecessary to speculate as to what has or has not been done subsequent to November 1924. Mr. Rangachariar relied upon *Subramania Iyer v. Hitchcock* : AIR1925 Mad950 in support of his contention that this granting of this amendment was without jurisdiction. The observations of the learned Judges in *Subramania Iyer v. Hitchcock* : AIR1925 Mad950 do not in any way affect the merits of this case. Each case would depend upon its circumstances and in an action for dissolution of partnership if the plaintiff comes to know that there is a business carried on in some place of which he was not aware at the time of the filing of the plaint he is certainly entitled to include a prayer for dissolution of that business. Plaintiff 1 is a young man of 24 years of age and he was not personally aware of what actually went on at Kolalampur. The decision in *Lowther v. Heaver* [1839] 41 Ch. D. 248 has no application to the present case. In that case the defendant was personally aware of the re-roofing of the building in his possession and he did not choose to put forward the plea with regard to the re-roofing and the learned Judges, if I may say with respect, very properly disallowed the prayer for amendment of the pleading by an inclusion of a plea on the ground of re-roofing. In this case it cannot be said that plaintiff 1 had any personal knowledge of what was going on at Kolalampur and therefore that case cannot apply to the facts of the present case. The amendment introduces no new cause of action. The cause

of action is the same and the only question is: What are the businesses that belong to this partnership? And if the Kolalampur business is one of the businesses belonging to the partnership, the plaintiffs are entitled to have that business also taken into account when a dissolution is ordered. If it does not belong to the partnership, the plaintiffs will not have any relief with regard to it. The powers of the Court under Order 46, Rule 17 are wide. No doubt the amendment should be confined to matters which may be necessary for the purpose of determining the real questions in controversy between the parties: What are the real questions in controversy between the parties here? The main question is: What are the partnership assets? and for determining that, all the businesses of the partnership will have to be taken into account. I hold that the learned Subordinate Judge did not act with material irregularity in granting the amendment prayed for. The civil revision petition is also dismissed with costs.

5. The stay petition is also dismissed with costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**