

APPELLATE CIVIL.

• Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SAMINATHA (DEFENDANT No. 2), APPELLANT,

v.

MUTHAYYA (PLAINTIFF), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 22—Amendment of plaintiff.

The creditor of a deceased trustee of a temple sued two persons, as his successors in office, to recover the amount of the debt. One of the defendants died; the other, who was the brother of the deceased, pleaded that other persons were joint trustees with him, and should have been impleaded with him, he also alleged that the debt in question was a private debt, and had not been incurred by the deceased as a trustee. The persons named were joined as defendants, and they repeated the above allegation. The plaintiff, thereupon, amended the plaint and prayed for a personal decree against the original surviving defendant, and the others were removed from the record. The amendment took place more than three years after the date when the debt was payable, but the suit had been instituted within that period:

Held, that the claim was not barred by limitation.

SECOND APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in appeal suit No. 463 of 1890, confirming the decree of T. Ramasami Ayyar, District Munsif of Tiruturaipundi, in original suit No. 80 of 1889.

Suit for money payable on 30th May 1886 to the plaintiff by a trustee of a temple now deceased. Defendants Nos. 1 and 2 were impleaded as his successors. Defendant No. 1 died. Defendant No. 2, the brother of the deceased debtor, pleaded that there were other trustees of the temple who should be joined as defendants. These persons were joined, and they pleaded that the debt had been incurred by the deceased in his individual capacity, and not as a trustee of the temple. The plaintiff then, viz., on 8th October 1889, amended the plaint and prayed for a personal decree against defendant No. 2, and the other defendants were removed from the record.

The Lower Courts passed decrees in favour of the plaintiff, and the defendant preferred this second appeal.

• Mr. Subramanyam for appellant.

R. Subramanya Ayyar for respondent.

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JUDGMENT.—The only question is whether the suit is barred by limitation. The plaintiff brought the suit against first and second defendants as representatives of one Kailasanadha (Pandara Sanadhi) the adhinastom or trustee of the temple at Vedaranyam, stating that the money was due on account of certain land purchased by Kailasanadha for the benefit of the temple. First defendant having died, the suit was proceeded with against second defendant alone as trustee of the temple. He pleaded that there were also other trustees who should be included as defendants, alleging, at the same time, that the property was purchased by Kailasanadha for the benefit of his own family. Under orders of the District Munsif, the others named by second defendant were made co-defendants. They also pleaded that the property was bought by Kailasanadha for his own benefit, and not for the temple. Thereupon plaintiff, with the permission of the Court, amended the plaint and prayed for defendants Nos. 3 to 8 being removed from the suit, and for a personal decree against second defendant alone.

Second defendant then contended that the suit, as amended, was time barred, and relied on section 22 of the Limitation Act.

We observe that the second defendant was a party on the record from the very commencement, and the question, whether the amendment ought to have been allowed or not, is not an objection taken.

The effect of the amendment was not to add a new person as defendant, but to alter the ground on which a person, already a defendant, was to be held liable, plaintiff accepting the defendant's contention that the purchase had been made on behalf of his own family, and not on behalf of the temple.

Having regard to section 22, we are of opinion that it is not intended to apply to a case in which the ground on which the original defendant is sought to be made liable is merely shifted, without new persons being included as defendants, the intention being not to take away from a person newly brought in as a defendant the benefit which the Act would give him were a suit instituted against him on that date. The decision in *Ganpat Pandurang v. Adarji Dadabhai*(1) tends to support this view, see page 321 of the Report.

We dismiss this appeal with costs.

(1) I.L.R., 3 Bom., 312.