

question as to misdescription or defect of parties was taken in the courts below, and the point does not affect the merits of the case. The second appeal is dismissed with costs.

PRESIDENT
OF THE
TALUK
BOARD,
SIVAGANGA
v.
NARAYANAN.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parkèr.

MALLIKARJUNA (PLAINTIFF), APPELLANT,

v.

PULLAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1892.
December 23.

Civil Procedure Code—Act XIV of 1882, s. 53—Amendment of plaint—Substitution of legal representative for deceased defendant.

A suit was brought to recover arrears of rent. The persons whose names were entered on the record as defendants were in fact dead when the suit was instituted. The suit was dismissed. The plaintiff appealed, and sought leave to amend the plaint by substituting for the names of the dead men those of their legal representatives, as against whom the suit would then have been barred by limitation :

Held, that the amendment should not be allowed.

CASES referred for the decision of the High Court under Civil Procedure Code, s. 617, by G. T. Mackenzie, District Judge of Kistna.

The case was stated as follows :

“The Zamindar of Challapalli filed these two suits before the District Munsif of Masulipatam to recover rent due by tenants. The tenants had died before the suits were filed, but the zamindar’s office was not aware of that. The District Munsif dismissed the suits. On appeal it is contended that plaintiff ought to be permitted to amend the plaint by substituting for the names of the dead men the names of their sons. The sons have been served as respondents and appear at the hearing of the appeals.

“It is contended for plaintiff that a fresh suit against the sons is time-barred and that a refusal to permit the amendment of the plaint is a denial of justice. It is contended that the father and son are one legal and continuous *persona*, and that this amendment does not change the nature of the suit. Especially

* Referred Cases Nos. 36 and 41 of 1892.

MALLIKAR- "may this be contended in the case of tenants under a zamindar,
 JUNA "who enjoy, if not permanent occupancy right, at least an hereditary
 v. "tenure from year to year, which can be terminated only
 PULLAYYA. "under section 12 of Act VIII of 1865.

"I have yielded to this argument in a revenue appeal, where^{or}
 "patta was tendered to a father and a suit to enforce acceptance
 "was filed after his death. In that case I substituted the son's
 "name, because it appeared to me that tender and suit were one
 "continuous legal process. But I am unable to extend this to a
 "suit in a Civil Court to collect rent. Such a suit commences
 "with the plaint, and if the defendant is dead before the plaint
 "is filed I think that plaintiff must file a fresh suit against the
 "heirs. There is some force in the argument about the hereditary
 "tenancy, but I think that this does not sufficiently differentiate
 "this case from the case of any other Hindu father and son.

"Holding this view, I was disposed to confirm the decision of
 "the District Munsif and to dismiss these appeals, but the plain-
 "tiff represented that there is no second appeal and asked that
 "a reference might be made, because the question is of import-
 "ance to him, as it is impossible that his central office should have
 "immediate information of the death of every raiyat who dies
 "on the estate."

Pattabhirama Ayyar for appellant.

The respondents were not represented.

JUDGMENT.—It does not appear that leave to amend was asked
 for in the Court of First Instance before decree. We do not
 think that an amendment ought to be allowed on appeal; if by
 so doing the defendant is likely to be precluded from pleading
 limitation. *Weldon v. Neal*(1).

Upon the facts stated, therefore, we are of opinion that the
 amendment asked for should be refused and the plaintiff left to
 his remedy by a regular suit.

(1) L.R., 19 Q.B.D., 394.
