



C.R.P(MD).NoS.1976 & 1977 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.03.2023
Pronounced on : 17.03.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).Nos.1976 & 1977 of 2022

K.V.R.S.Jeevan (Died)
1.R.J.Shanthadevi(Died)
2.R.J.Arul Kumar
3.C.R.Bhuvaneshwari
4.C.R.Ajandhini

... Petitioners/Petitioners/Plaintiffs
(In both Petitions)

(Memo dated 04.01.2023, presented before the Court on 05.01.2023 is recorded, as 1st petitioner died, and the petitioners 2 to 4, who are already on record, are recorded as Lrs of the deceased 1st petitioner vide Court order dated 05.01.2023 made in CRP(MD)No.1976 and 1977 of 2022 by BPJ)

Vs.

B.S.Kuppsami (Died)
1.B.K.Damodharan
2.B.S.Niranjana Kumar
3.B.S.K.Pradeep Kumar
4.Prameela Devi
5.Nagarajan
Gunasekaran (Died)
6.Thamayanthi
7.Bharathi
8.Rathi
9.Minor.Chandrasekaran
10.Minor.Mahesh Boopathi
11.Minor.Malayayee

... Respondents/Respondents/Defendants
(In both Petitions)



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(Minor Respondents 9 to 11 represented through their mother and guardian the 6th respondent herein)

The 1st respondent/1st Defendant died and his legal representatives are the respondents 1 to 4 herein and the defendants 2 to 5 in the suit.

COMMON PRAYER:- This Civil Revision Petitions have been filed under Article 227 of the Constitution of India, to set aside the order of the lower Court rendered in I.A.Nos.65 & 64 of 2019 in O.S.No.108 of 2012 dated 10.02.2021 of the District Munsif Court, Madurai Taluk, to allow the said application and the Civil Revision Petitions.

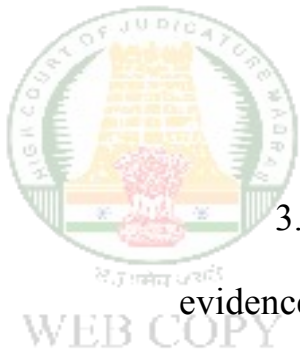
(In both Petitions)

For petitioners : Mr.T.R.Subramanian
For R5 : Mr.T.K.Goplan

COMMON ORDER

By this common order, these civil Revision petitions are disposed of. These Civil Revision Petitions have been filed by the petitioners/plaintiffs in O.S.No.108 of 2010. The petitioner is aggrieved against the impugned fair and decreetal orders in I.A.Nos.64 & 65 of 2019.

2.These applications were filed by the petitioners after the trial was completed and the case was posted to 28.01.2019 for pronouncing judgment. These applications were filed by the petitioners (Plaintiffs) on 25.01.2019 to amend the description of property on the strength of description of the property in Ex.A.5.



3.The other application in I.A.No.165 of 2019 was filed to reopen the evidence of the plaintiff.

4.The specific case of the petitioner is that the petitioner's forefather Late.Mr.K.V.R.Surendranathachari had originally executed a mortgage deed in favour of B.K.Sakunthala vide Ex.A1 dated 15.12.1971 for a period of 5 years. The period would be expired on 14.12.1976. A fresh mortgage deed was executed by the said K.V.R.Surendranathachari vide Ex.A.5 dated 16.07.1975 in favour of 6th and 7th defendants, who are the respondent No.5 & 6 in these Civil Revision Petitions.

5.It is submitted that the schedule was wrongly mentioned in the plaint and therefore, the applications have been filed for amending the plaint schedule and for reopening the evidence. In support of the plea, the learned counsel for the petitioners/plaintiffs would submit that the suits have been filed in time. The prayer for amending the plaint cannot be denied, which has been wrongly denied by the fair and decreetal order in I.A.No.64 of 2019. In this connection, the attention is drawn to Order VI Rule 17.



6. That apart, the learned counsel for the petitioners has placed the reliance of following decisions:-

1. Rajesh Kumar Aggarwal And Another Vs. K.K. Modi And Others reported in **(2006) 4 SCC 385**

2. Rengarajan & Another Vs. Rajendran & Another reported in **2017 4 L.W 465**

3. T. Raja Reddy Vs. C. Srinivasa Reddy and Others reported in **2013 (2) MWN (Civil) 395**

4. Hi. Sheet Industries Vs. Litelon Limited represented by its **Managing Partner, S. Gokul and others** reported in **2006 (5) CTC 609**

7. The learned counsel for the petitioners would submit that the suit was filed within a period of 30 years in terms under Article 61(a) of the Limitation Act, 1963 and therefore, the amendment in the plaint cannot be denied.

8. Per contra, the learned counsel for the contesting defendant No. 6 & 7, who are the respondent No. 5, 6 to 11 representing the interest of deceased 7th defendant Gunasekaran submits that the property in question was mortgaged by Late. Mr. K. V. R. Surendranathachari to one B. K. Sakunthala, W/o of P. S. Kuppusamy, vide Ex. A.1 dated 15.12.1971.



9.It is submitted that the amendment in pleading cannot be allowed as the amendment would allow, the plaintiff to revive the limitation which expired in respect of the property which was originally mortgaged to B.K.Sakunthala by Late.Mr.K.V.R.Surendranathachari on 15.12.1971 to an extent of 4 acres 96 cents in S.No.13, Varaganeri Village.

10.It is further submitted that the said B.K.Sakunthala assigned right in favour of 6th and 7th defendants in the suit and therefore, the amendment to the plaint cannot be allowed, particularly, in view of the fact that the suit is of the year 2010 and the application was filed to reopen the evidence and for amending the plaint after the trial was completed and the case was reserved for pronouncing judgment on 28.01.2019.

11.The learned counsel for the respondent submitted that the schedule of property was mortgaged earlier in favour of the said B.K.Sakunthala, W/o. P.S.Kuppusamy, the first defendant in the suit is as per D.No.1659/1971 dated 15.12.1971. It is therefore the contention of the respondent that the amendment to the pleading cannot be allow if the limitation period is expired.



12.The learned counsel for the respondents/defendants would submit that in case, this Court is inclined to allow the Civil Revision Petitions, the right of the defendants to raise all pleas relate to limitation, deserves at the time of final argument.

13.The learned counsel for the contesting respondent has placed reliance on the following decisions:-

1.Tamilnadu Alloy Foundry Cp.Ltd., Plots No.21 and 33, SIPCOT Complex, Hosur and 3 others reported in 2001 (4) CTC 174

2.Vijay Hathising Shah and Another Vs. Gitaben Parshottamdas Mukhi and Others reported in AIR 2019 SC (Civil) 1338

3.Karuthkannan Nadar Vs Tamilnadu Electricity Board reported in 2001 (1) MLJ 833

4.Electricity Board Vs Tamilnady Alloy Foundry Co.Ltd., reported in 2001 (4) CTC 174

5.Chander Kanta Bansal Vs Rajinder Singh Anand reported in 2008 (5) SCC 117

6.Ashutosh Chaturvedi Vs Prano Devi @ Parani Devi & Others reported in AIR 2008 SC 2171

7.Rajkumar Gurawara (Dead) LHs Vs M/S.S.K.Sarwagi &



Co.Pvt.Ltd & Another reported in **Air 2008 SC 2303**

8.Vijay Hathising Shah Vs Gitaben Parshottamdas Mukhi reported
in **AIR 2019 SC (Civil) 1338**

9.J.Samuel and Others Vs Gattu Mahesh and Others reported in
2012 (3) MLJ 159 (SC)

10.Vidyabai & Others Vs. Padmalatha & Another reported in **2009**
(2) SCC 409

14.I have perused the decisions cited by the learned counsel for the
petitioners and the contesting respondent herein.

15.The application for amendment of plaint contemplating under Order
VI Rule 17 of CPC, which reads as follows:-

VI Rule 17 of CPC:- Under Order VI Rule 17, an
amendment application can be filed at any stage of the
proceeding. Filing of affidavit by way of evidence itself is not a
good ground to reject the application filed seeking amendment
of written statement. It is not out of place to mention that the
parties must be allowed to plea. Such a valuable right cannot be
curtailed in the absence of good ground.



16.The Hon'ble Supreme Court in **Rajesh Kumar Aggarwal and Others. Vs. K.K.Modi and Others** reported in (2006) 4 SCC 385 the Court held as under:-

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. While considering whether and application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

17.The Hon'ble Supreme Court in **Vidhya Boy and Others Vs. Padmalatha and Another** 2009 (2) SCC 409 has examined entire gamut of law settled by the Hon'ble Supreme Court and few High Court and held as



under:-

“However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

18.It is clear that the court can allow the amendment of pleading at any stage provided jurisdictional facts as envisaged is found to be existing. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court. The description of property in the schedule to the plaint reads as under:-

“Description of Property

மதுரை டி.தாமரைப்பட்டி சப்டி, மதுரை வடக்கு தாலுகா, பழைய 110 நிர் புதிய 121 நிர் வரகனேரி கிராமத்தில் பழைய பட்டா எண்.127-ல் புதிய பட்டா எண்.57-ல் கண்ட நஞ்சை நிலங்களான

R.S.No.132/3 நிரில் ஏக்கர் 1 செண்டு 28

133/1 நிரில் ஏக்கர் 1 செண்டு 52

133/2 நிரில் ஏக்கர் செண்டு 25

138/1 நிரில் ஏக்கர் செண்டு 48

ஆக மொத்தம் ஏக்கர் 3 செண்டு 51 நிலத்தில்
பிரிவினையில்லாத பாதி ஏக்கர் 1 செண்டு 75-1/2-ம் உள்ள



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நிலம் உள்பட மற்றும் மதுரை டி, மதுரை சப்டி, மதுரை வடக்கு தாலுகா அயன் வெள்ளாக்கப்பான் கிராமத்தில் நஞ்சை R.S.No.9 நிரில் ஏக்கர் 1 செண்டு 48 உள்ள நிலத்தில் பிரிவினையில்லா செண்டு 74 உள்ள நிலம். சை கிராமம் சர்வே 4/8 நிரில் செண்டு 26 உள்ள களத்தடி இடமும் அதிலுள்ள காரை வீடு வகையறா உள்பட சமதமும்.”

19.The description of property in the subsequent mortgage deed dated 16.07.1975 in favour of the 6th & 7th defendant by Late.Mr.K.V.R.Surendranathachari in Ex.A.5 reads as under :-

“மதுரை டி-தாமரைப்பட்டி சப்டி, மதுரை வடக்கு தாலுகா, பழைய 110 நிர் அயன் வரகனேரி கிராமத்தில் எங்களில் 1வது நபர் பேரால் உள்ள 127 நிர் பட்டாவில் கண்ட நஞ்சை ரீசர்வே 13 நிம்பர் ஏக்கர் 4 செண்டு 96 தொண்ணூற்றி ஆறு உள்ள நிலம்”

20.The documents that were filed before the trial Court in Exs.A.1 and A.5 clearly indicate that the property in R.S.No.13, measuring an extent of 4 Acres and 96 Cents was part of the mortgage by Late.K.V.R.Surendranathachari to Defendant Nos.6 and 7. Thus, the omission to include the land in R.S.No.13, measuring an extent of 4 Acres and 96 Cents in the suit schedule to plaint was an oversight.

21.Applying the decision of the Hon'ble Supreme Court in **Rajesh Kumar Aggarwal and others vs. K.K.Modi** and others reported in **2006 (4)**



SCC 385, I am of the view that the trial Court committed an error in declining the amendment to the plaint sought for even though the application for amendment under Order VI Rule 17 of C.P.C. was made in the last minute when the case was reserved for pronouncing judgment. Since the application was filed at the fag end of the proceedings just before the trial Court was to deliver its judgment, the trial Court should have allowed the application and ordered cost on the petitioners. Therefore, the Civil Revision Petition deserves to be allowed on terms.

22.The petitioners are therefore directed to pay a sum of Rs.30,000/- to 5th respondent/6th defendant through their counsel within a period of 30 days.

23.On such compliance by the petitioners, the application filed for amendment of the plaint shall stand allowed. The case shall be thereafter listed before the Trial Court for further proceedings. The Trial Court shall thereafter endeavour to pass final judgment and decree within a period of three months from the date of first hearing pursuant to this order. All the points relating to limitation which was canvassed before this Court is left open to be canvassed by the contesting respondents/defendants.



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24.These Civil Revision Petitions stand allowed on terms with the above observation. No costs.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

- 1.The the District Munsif Court,
Madurai Taluk.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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C.SARAVANAN,J.

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