



CRP (MD) No.857 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.07.2023
Pronounced on	18.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.857 of 2020

and

CMP(MD)No.5695 of 2020

1.S.Kannan

2.S.Kandappan

... Petitioners

Vs.

A.Mahadevan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and executable order passed in I.A.No.132 of 2019 in A.S.No.21 of 2018 on the file of the Sub Court, Pattukottai, dated 10.07.2020.

For Petitioners : Mr.J.Barathan
for Mr.B.Karunanithi

For Respondent : Mr.D.R.Murugesan



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ORDER

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This civil revision petition is preferred as against the fair and executable order passed in I.A.No.132 of 2019 in A.S.No.21 of 2018 by the learned Subordinate Judge, Pattukottai, dated 10.07.2020.

2. The facts in brief are as follows:-

The property in Survey No.12/11 Mudapulikkadu 1st Bit Village of Peraoorani, which is a total extent of 70 cents, originally belonged to M.K.Panneerselvam, M.Karuppaiah and one another. Out of 70 cents, southern portion of 23 1/3 cents was allotted to M.K.Panneerselvam, the middle portion of 23 1/3 cents was allotted to M.Karuppaiah and others and the remaining northern portion of 23 1/3 cents was allotted to another person. There is no dispute regarding the northern portion of 23 1/3 cents. The middle portion of 23 1/3 cents is concerned, the said Karuppaiah and others sold 10 cents to one Chidambaram Chettiar on 22.11.1979 and the same was sub-divided as Survey No.12/11A2 and the remaining 13 1/3 cents was sub-divided as 12/11A1. In Survey No.12/11A2, Chidambaram Chettiar sold



western 4 cents to one Valli on 21.05.1998. He also sold eastern 4 cents 96 sq.ft. to one Elango on 28.12.1999. The said Chidambaram Chettiar retained the middle portion with him. In order to reach the property purchased by Valli from eastern road to the western 4 cents of the property of Valli, there is an east-west pathway on the southern side. The petitioners have purchased the property comprised in Survey No.12/11A1 an extent of 17 cents and in Survey No.12/11D an extent of 2.5 cents through a sale deed dated 23.04.2007. The petitioners have also purchased the western 4 cents in 12/11A2 from the above said Valli including the right of pathway through a sale deed dated 23.04.2007.

The said Chidambaram Chettiar died leaving his legal heirs. After his death, the legal heirs of Chidambram Chettiar sold an extent of 981 sq.ft instead of 776 sq.ft. An extent of 205 sq.ft. was sold by the legal heirs of Chidamabram Chettiar even without having any title, interest or whatsoever. The above said 205 sq.ft. is exclusively belonged to the petitioners. Hence, the petitioners as plaintiff filed the above suit in O.S.No.164 of 2012 on the file of the District Munsif Court, Pattukottai, for declaration declaring that the



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suit pathway belongs to the plaintiffs and for consequential relief of permanent injunction restraining the defendants from in any way to enjoy the suit property as a pathway. During the pendency of the suit, the respondent/defendant put up a shed and therefore, the plaintiff sought a prayer for mandatory injunction directing the defendant to remove the shed illegally put-up by him. However, the trial Court by its decree and Judgment dated 25.07.2018 dismissed the suit, against which, the petitioners have preferred an appeal in A.S.No.21 of 2018 before the learned Subordinate Judge, Pattukottai. During the pendency of the appeal, the petitioners/plaintiffs have filed a petition to amend the plaint in respect of Survey Number, in I.A.No.132 of 2019, since the subject matter of the suit property comes in Survey No.12/11A2. But in the suit, the survey number was wrongly mentioned as 12/11A1. The above said suit was dismissed on the grounds that there is no dispute in Survey No.12/11A1 and the defendant purchased the property only in Survey No.12/11A2 and the plaintiffs did not not take any effort to appoint an Advocate Commissioner. In spite of due diligence, the petitioners have wrongly mentioned the survey number as 12/11A1 instead of 12/11A2. To give a quietus to the issue, the petitioners



have filed a petition to amend the survey number. The said application was dismissed by the appellate Court, against which, the petitioners have preferred the present revision.

3. The learned counsel appearing for the petitioners would submit that the Court always gives relief to amend the pleading of the party, unless it is satisfied that the party was acting *mala fide* or that by his blunder he had caused injury to his opponent which cannot be compensated by an order of costs. He would further submit that the prayer for amendment is generally required to be allowed, unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.



(vi) *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

(vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

(viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

(ix) *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

(x) *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

(xi) *Where the amendment is sought before commencement of trial, the court is required to be liberal in*



its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

He would further submit that Order 6 Rule 17 of the Act 22 of 2002 is applicable to the pleadings instituted with effect from 01.07.2002 and not to the pleadings instituted prior to 01.07.2002. To support his contention, he has relied upon the decisions reported in **2006 SCC online Mad 1077, 2022 SCC Online SC 1128 and (2015) 13 SCC 132.**

4. On the other hand, the learned counsel for the respondent/defendant would submit that the relief sought for before the appellate Court, is nothing but an after thought designed to defeat and dilute the Judgment rendered by the trial Court in favour of the respondent. After effectively contesting the



suit in a manner known to law, placing an argument that they came to know about the sub division during appeal, is nothing but a protracted procedure and liable to be ignored. After realizing the fact that they have no case in the present suit, they purposely designed the petition for amendment with an intention to introduce a new case at the appellate stage with retrospective effect. He would further submit that the amendment cannot be claimed by a party as a matter of right. The party claiming such amendment must prove his bona-fideness that despite due diligent it was inevitable to seek the amendment earlier. The appellate Court after perusing the materials on record and the argument advanced by the respective counsel and also considering the facts on record, has rightly dismissed the above petition, which calls for no interference. To support his contention, he has relied upon the decision reported in **2022 (2) CTC 381**.

5. Heard on both sides and records perused.

6. Order 6, Rule 17 CPC runs as follows:-

17.Amendment of Pleadings.-- The Court may at any



stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

7. Therefore, the object of the above provision is to see that the amendment must be made to those facts which are already pleaded in the plaint. If it changes the nature of suit or the cause of action, then it must be disallowed. In the present case, the petitioners/plaintiffs sought to amend the plaint in respect of survey number mentioned in the plaint. According to the petitioners/plaintiffs they have wrongly mentioned the survey number as 12/11/A1 instead of 12/11A2. Admittedly, the petitioners have lost their claim in the trial Court. If the amendment sought for by the petitioners is allowed, it would dilute the discussion of the trial Court in its judgment. The appellate Court has rightly held that if the amendment is allowed, it would introduce a new case in the appeal and the entire plaintiffs' case will be rewritten and it is nothing but re-litigation in the form of amendment. Moreover, the present amendment has been muted without any conjoint



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pleadings. Therefore, the relief sought for by the petitioners by incorporating Survey No.12/11A2 instead 12/11A1 would completely change the character of the suit. Therefore, the petitioners cannot be permitted to change the nature of the suit during appeal after his claim was defeated in the trial Court. The appellate Court has rightly dismissed the application filed by the petitioners, which calls for no interference.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Subordinate Judge,
Pattukottai,

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order made in
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