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C.R.P(MD)No.1506 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1506 of 2023

and

C.M.P(MD)No.7423 of 2023

1.Karunanithi
2.Tamilselvan
3.Kumar

... Petitioners/Respondents 1 to 3/
Defendants 1 to 3

Vs.

1.Baskaran
2.Ravi
3.Dhanabalan
4.Jeyabalan

... Respondents 1 to 4/Petitioners/
Plaintiffs

5.The Commissioner
Paramakudi Town,
Ramanathapuram District.

6.The District Collector,
Ramanathapuram Town,
Ramanathapuram District.

... Respondents/Respondents 4&5
Defendants 4 & 5

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1 of 2023 in O.S.No.117 of 2013 on the file of the District Munsif, Paramakudi, Ramanathapuram District, dated 26.04.2023 by allowing this civil revision petition.



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For Petitioner
For R1 to R4
For R5&R6

:Mr.M.Mohamed Sherbudeen
:Mr.PT.S.Narendravasan
:Mr.G.Suriyanath
Additional Government Pleader

ORDER

This civil revision petition is filed as against the order dated 26.04.2023 passed in I.A.No.1 of 2023 in O.S.No.117 of 2013 on the file of the District Munsif, Paramakudi, Ramanathapuram District.

2.The above suit is filed by the respondents/plaintiffs for the following reliefs:

“(அ) தாவா 1. லக்க சொத்தை வாதிகளுக்கு பாத்தியம் என்று டிக்ளேர் செய்தும்

(ஆ) அதன் தொடர்ச்சியாக தாவா 1. லக்க சொத்தை இந்த நிர் பிரதிவாதிகள் வாதிகளிடம் ஒப்படைக்கத்தக்கதாய் 1 முதல் 3 பிரதிவாதிகள் மீது சுவாதினம் பரிகாரம் கோரியும்

(இ) இவ்வழக்கிற்கான செலவினை 1 முதல் 4 பிரதிவாதிகளை கொடுக்க சொல்லியும்

(ஈ) இன்னும் இவ்வழக்கின் நண்மைக்கும் தன்மைக்கும் தக்க இதர பரிகாரங்கள் கொடுத்தும் வாதிக்கு சாதகமாக தீர்ப்பு செய்ய வேண்டி பிராத்திக்கப்படுகின்றது.”

3.During the pendency of the above suit, the respondents 1 to 4/plaintiffs filed an application in I.A.No.1 of 2023 under OrderVI Rule 17, 18 and Section 115 of C.P.C., to amend the plaint. In the said petition, the



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respondents 1 to 4/plaintiffs would contend that only on reading the proot affidavit filed by D.W.1, he came to know that the suit property is comprising in S.No.179 and in the cause of action para, there was a mistake crypt in with regard to the Town Survey Number, though correct old survey number is mentioned. He would further contend that though Court fee for the 2nd item of the suit property was paid, proper relief was not asked. Hence, he prays for amending the plaint.

4.The same was resisted on the side of the petitioners/defendants by stating that by changing the survey number in the plaint, it would change the nature of the suit and the above petition is filed by the respondents/plaintiffs only to drag on the proceedings. However, the trial Court allowed the petition on payment of cost of Rs.2,000/-. Aggrieved by the same, the above revision is preferred by the petitioners/defendants.

5.The learned counsel appearing for the petitioners would contend that the said amendment petition was filed after the commencement of trial and it is now at the stage of cross-examination of D.W.1 and therefore, the trial Court ought to have dismissed the above petition. The learned counsel would further contend that the prayer for amendment was belated one.



6.Heard the learned counsel appearing for the petitioners, learned counsel appearing for the respondents 1 to 4 and the learned Additional Government Pleader appearing for the respondents 5 and 6 and perused the materials available on record.

7.It is well settled that the amendment cannot be claimed by the party as a matter of right. However, the discretion to be exercised by the Court is acted by the principles mentioned under the provision of Rule 17 C.P.C and depends on the facts and circumstances of each case. The object of the proviso is to give limited discretion to the Courts and that being to the subjective satisfaction of the Courts to certain amendment to the proceedings. However, the ultimate focus will be on the party claiming such amendment to prove essential benefit and to prove that despite due diligence it was inevitable to seek the amendment earlier. Moreover, amendment must be made to those facts which are already pleaded in the plaint. If it changes the nature of the suit or the cause of action then it must declined it. In the present case, the respondents 1 to 4/plaintiffs' claims that only at the time of D.W.1 cross-examination, they came to know of the mistakes. Therefore, in spite of due to diligence they could not have raised the same before the trial. Further more, though Court fee is paid for the second item, no prayer regarding the second item of the property was sought



for. Therefore, no prejudice would be caused to the respondents 1 to 4, if the prayer is amended.

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8.I am of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Proceeding, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. For the belated filing of the petition, the Court has compensated with the petitioners/defendants by awarding compensation.

9.Therefore, there is no merit in the above revision petition. However, considering the fact that the above suit was filed in the year 2013, the learned District Munsif, Paramakudi, Ramanathapuram District, is directed to dispose the suit in O.S.No.117 of 2013, on merits and in accordance with law, without giving any unnecessary adjournment, after affording sufficient



opportunities to the parties concerned to put-forth their contention, as expeditiously as possible, within a period of three months from the date of receipt of a copy of this order.

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10.In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P is closed.

19.07.2023

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

- 1.The District Munsif,
Paramakudi,
Ramanathapuram District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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