



C.R.P.(MD)No.3082 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.11.2023

Delivered on : 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3082 of 2023

and

C.M.P.(MD)No.15908 of 2023

1.Elumalai

Pappa (died)

2.Rengasamy @ Durairaj

3.Ramasamy

4.Subramani

: Petitioners/Petitioners/Defendants

Vs.

Oomaiyan (died)

1.Ellammal

Govindharaj (died)

2.Anbazzhagan

3.Jothilakshmi

4.Minor.Vijayaram

5.Minor.Devadharshini

: Respondents/ Respondents/Plaintiffs



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Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.5 of 2023 in O.S.No.17 of 2012, dated 28.08.2023 on the file of the District Munsif Court, Keeranur.

For Petitioners : Mr.A.Thiyagarajan

ORDER

The Civil Revision Petition is directed against the fair and decreetal order passed in I.A.No.5 of 2023 in O.S.No.17 of 2012, dated 28.08.2023 on the file of the District Munsif Court, Keeranur, dismissing the petition filed under Order VI Rule 17 of C.P.C.

2. The respondents as plaintiffs have filed the suit to declare that the suit properties are belonging to them and for consequential permanent injunction restraining the defendants and their men from in any manner interfering with the peaceful possession and enjoyment of the suit properties. The defendants have filed their written statement on 11.06.2013, when the suit was in part-heard stage, the above petition seeking orders to amend the written statement came to be filed.



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3. The case of the revision petitioners/defendants is that the first defendant has purchased the second item of the suit properties from the first plaintiff on 10.06.1969; that the second defendant's husband had purchased the second item of the suit property 40 years ago from his father-in-law orally; that they have averred in the written statement that the properties are their ancestral properties by innocence and that therefore, its become just a necessary to amend the written statement so as to include their present stand with respect to the suit properties.

4. The defence of the respondents/plaintiffs is that the above petition has been filed 10 years after filing of the original written statement; that the defendants have not assigned any valid reasons for amending the written statement; that the defendants have not approached the Court with clean hands and that therefore, the petition is liable to be dismissed.

5. It is evident from the records that after filing of the written statement by the defendants on 11.06.2013, issues came to be framed on 20.02.2017; that subsequently, the plaintiffs have filed an application in



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I.A.No.554 of 2017 for amending the plaint and the same was allowed on 11.09.2017; that though opportunity was given to the defendants for filing the additional written statement consequent to the amendment of the plaint, they have not chosen to file any additional written statement; that the trial was commenced on 21.02.2018; that when the case was pending for P.W.1 cross examination, the second defendant was reported dead on 26.04.2016 and steps were taken; that the third plaintiff was also reported dead and since steps were not taken, the suit was ordered to be dismissed for default on 03.11.2018; that subsequently, the suit was restored to file; that thereafter, steps were taken and when the plaint was consequently amended, the above petition came to be filed 10 years after filing of their original written statement.

6. Now turning to the proposed amendments, the defendants have claimed to replace the following the passage found in Page No.2 of the original written statement .

“ உண்மை நிலவரம் என்னவெனில் வாதி வழக்கில் 1வது அயிட்ட சொத்தாக காண்பிக்கப்பட்டுள்ள சொத்தும் இன்ன பிற சொத்துக்களும், 1, 2 பிரதிவாதிகளின் பாகத்திற்கு ஒதுக்கப்பட்டது. அவர்களின் பாகத்திற்கு ஒதுக்கிவிடப்பட்ட பின் 1, 2 பிரதிவாதிகள்



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தங்கள் தனித்த அனுபவத்தில் வைத்து யாருடைய குறுக்கீடும் இன்றி அனுபவம் செய்து வந்தனர். அதன் பின்னிட்டு கடந்த 26.03.1993ம் வருடம் 2ம் பிரதிவாதியின் கணவர் முத்துச்சாமி நாயக்கர் தனக்காகவும், தனது மைனர் மகன் வழக்கின் 5ம் பிரதிவாதிக்கு கார்மியன் என்ற முறையிலும், மற்றும் 3, 4 பிரதிவாதிகள் சேர்ந்து தங்களது பாகத்திற்கு ஒதுங்கிய சொத்தான வழக்கு “அ” அட்டவணைச் சொத்தினை 1 ம் பிரதிவாதிக்கு கிரையம் செய்து கொடுத்துவிட்டனர். மேற்படி கிரையமும் விராலிமலை சார்பதிவாளர் அலுவலகத்தில் புத்தகம் 1 1993ம் ஆண்டின் ஆவண எண் 213 ஆக பதிவு செய்யப்பட்டுள்ளது.

they wanted to replace with the following passage.

“அந்த இடத்தில் வழக்கு ச.எண்.123 ஆனது 1 – ம் பிரதிவாதியின் தகப்பனார் பெருமாள் நாயக்கர் என்பவர் 2 – ம் பிரதிவாதியின் மாமனாபிடம் பெற்ற கடனுக்காக வழக்கு ச.எண்.123 – ஐ 2 – ம் பிரதிவாதியின் கணவருக்கு சுமார் 40 வருடங்களுக்கு முன்னர் வாய்மொழியாக கிரயம் கொடுத்துவிட்டார். அது முதல் 2 – ம் பிரதிவாதியின் கணவர் முத்துச்சாமி என்ற முத்தாநாயக்கர் என்பவருக்கு பாத்தியப்பட்டு அவருடைய அனுபவத்தில் இருந்து வந்தது”.

7. The defendants have also claimed to remove three lines found in page No.2 para No.5 of the original written statement, which is as follows:

“ தாவா “அ” அட்டவணை சொத்து இந்த 1ம் பிரதிவாதிக்கு கிடைத்தவுடன் அதில் இருந்த கூரை வீட்டிற்கு பதிலாக ஓட்டு வீடாக பயன்படுத்தி வருகிறார். 1ம் பிரதிவாதியின் ஓட்டு வீட்டிற்கு கிழக்கே.”



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In para No.6 of the original written statement, they have averred

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“தாவா “ஆ” அட்டவணை சொத்தை வாதியின் தகப்பனார் சுத்தலிப்பட்டி வைத்தியலிங்கம் செட்டியார் மகன் கோபால் செட்டியார் என்பவரிடம் அடமானம் வைத்ததை இந்த 1ம் பிரதிவாதி அடமானக் கடனை கட்டி தாவா “ஆ” அட்டவணை சொத்தை மீட்டு தான் வைத்துக் கொண்டார்.

But, now they wanted to add another line by deleting the words “மீட்டு தான் வைத்துக் கொண்டார்” with “கிரயம் பெரும்பொழுது “ஆ” அட்டவணைச் சொத்திலுள்ள அடமானக் கடனை 1 – ம் பிரதிவாதியே செலுத்தினார்”.

7. Considering the above, as rightly contended by the respondents/plaintiffs side before the trial Court, the defendants have raised pleas which are totally inconsistent with their earlier stand and as such, they cannot seek proposed amendments in a casual manner by alleging that the present stand was not taken because of their innocence.

8. At this juncture, it is necessary to refer the judgment of the Hon'ble Apex Court in *Alkapuri Co-operative Housing Society Limited Vs. Jayantibhai Naginbhai* reported in *2009 3 SCC 467*, wherein it was observed that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the



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suit stands on a different footing than the one which had arisen prior to the date of institution of the suit.

9. Considering the above, the same position can very well be applied for the written statement also. Moreover, the defendants have not made out a case that inspite of their due diligence, they could not file the amendment application before trial.

10. It is settled law that subsequent to the insertion of the proviso to Rule 17 of Order VI, no application for amendment shall be allowed after trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial and the entire object of the amendment introduced in the year 2002 is to stall filing of application for amending the pleadings subsequent to the commencement of trial.

11. As rightly observed by the learned trial Judge, after commencement of trial, the defendants cannot be allowed to fill up the *lacunae* through the proposed amendments.



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12. Viewing from any angle, this Court concludes that the defendants are not entitled to get the relief claimed and as such, the impugned order, dismissing the amendment petition cannot be found fault with. Consequently, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. However, the suit is pending from 2012 onwards, the learned trial Judge is hereby directed to complete the trial and dispose of the suit as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The District Munsif Court,
Keeranur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.R.P.(MD)No.3082 of 2023
and
C.M.P.(MD)No.15908 of 2023

Dated : 22.12.2023