

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2015

CORAM

THE HONOURABLE MR.**JUSTICE D.HARIPARANTHAMAN**

C.R.P (PD) No.3942 of 2015

and M.P.No.1 of 2015

Thangamuthu

... Petitioner

VS.

1.Mohan @ Mohanasundaram

2.Nagamani

3.Anbumani

4.Shanmugam

5.Periyasamy

.... Respondents

Civil revision petition has been filed under Article 227 of the Constitution of India against the judgment and decree in I.A.No.498 of 2015 in O.S.No.471 of 2014 dated 14.07.2015 on the file of the Principal District Munsif, Erode.

For Petitioner : Ms.V.Srimathi

ORDER

The revision petitioner is the defendant in O.S.No.471 of 2014 on the file of learned Principal District Munsif, Erode. The respondents herein are the plaintiffs therein. It is a suit for permanent injunction.

2. According to the respondents / plaintiffs, they were selected as festival committee members by the public of Echipalayam Village to conduct the festival for the temple of Mariamman, Bhaghavathiamman and other deities. According to them, the revision petitioner's family was already conducting the festival as Dharmakarthas and the jewels of the temple were under their custody. It is the case of the respondents / plaintiffs that the revision petitioner is allegedly refusing to hand over the jewels of the temple when the jewels were requested by them for the purpose of festival. Hence, the respondents / plaintiffs filed an application in I.A.No.498 of 2015 in O.S.No.471 of 2014 under Order VI Rule 17 C.P.C. to amend the prayer in the suit for mandatory injunction also to direct the revision petitioner / defendant to hand over the jewels that belong to the temple. The revision petitioner / defendant filed a counter affidavit denying the same. After hearing both sides, the Trial Court passed an order dated 14.7.2015 in I.A.No.471 of 2015 in O.S.No.471 of 2014 allowing the amendment. The revision petition is against the aforesaid order.

3. Learned counsel appearing for the revision petitioner has vehemently contended that since the trial has commenced and the suit is posted for cross examination of P.W.1, the Trial Court committed an error in allowing the amendment application. Learned counsel has strenuously contended that after the commencement of the trial, the Trial Court ought not to have allowed the amendment. She has strongly relied on the judgment of the Hon'ble Apex Court in the case of **J.Samuel and others v. Gattu Mahesh and others** reported in **(2012) 2 Supreme Court Cases 300**, more particularly para 16 of the said judgment.

4. I have considered the submissions made by the learned counsel appearing for the revision petitioner.

5. It is useful to extract Order VI Rule 17 C.P.C. and the same is extracted hereunder:-

" **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 deciding the real question in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of diligence the party could not have raised the matter before the commencement of trial."

6. As per Order 6 Rule 17 C.P.C., amendment can be made at any stage of the proceeding.

7. However, the proviso restricts the Trial Court to make amendment if trial has commenced. After the trial has commenced, as per the said proviso, if 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, the Trial Court can allow the amendment.

8. Firstly, I am of the view that it is well settled that the proviso cannot be narrowly interpreted and the same cannot take away the very purpose of the provisions of the main section.

9. In any event, I do not suggest that the parties can move amendment without explaining the necessity of the amendment and about the due diligence if the trial has commenced.

10. At the same time, the main provision provides for amendment at any stage of the proceedings. The same cannot be lost sight of.

11. In the judgment relied on by the learned counsel appearing for the revision petitioner the case of **J.Samuel and others v. Gattu Mahesh and others**, the Hon'ble Apex Court held that the amendment of the pleadings in that case is not warranted. The reliance placed in para 16 of the said judgment is extracted hereunder:-

" 16. As stated earlier, in the present case, the amendment application itself was filed only on 24.9.2010 after the arguments were completed and the matter was posted for judgment on 4.10.2010. On proper interpretation of the proviso to Rule 17 of Order 6, the party has to satisfy the court that it could not have

discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the proceedings. However, the proviso restricts that power once the trial has commenced. Unless the court satisfies (sic itself) that there is a reasonable cause for allowing the amendment, normally the court has to reject such a request. "

In that case, the amendment was sought for, after the arguments were completed by both sides and when the suit was posted for judgment. In those circumstances, the Hon'ble Apex Court came to the conclusion that the party should satisfy that there is a reasonable cause for allowing the amendment. Normally, the Court has to reject such a request if there is a belated application. Even while holding so, the Hon'ble Apex Court held that no doubt, Rule 17 confers powers on the Court to amend the pleadings at any stage of the proceedings. As stated above, since the amendment was sought for after the arguments were over and when the suit was posted for judgment, the Hon'ble Apex Court held so as extracted in para 16. In this case, the suit is posted for cross examination of P.W.1. Further, the Trial Court

has considered the matter in detail and held that if the amendment is not allowed, it would cause serious prejudice to the respondents / plaintiffs and there would be no prejudice to the revision petitioner / defendant. Further, the Trial Court held that initially the prayer was for permanent injunction and later, the respondents / plaintiffs pleaded that when they sought for return of the jewels for the temple, the same was refused and hence, they sought to amend the prayer. The Trial Court considered the same and allowed the amendment.

12. Further, the Trial Court has relied on the judgment of the Hon'ble Apex Court in the case of **Surender Kumar Sharma v. Makhan Singh** reported in **(2009) 10 SCC 626** and extracted the following passage from the said judgment:-

" As noted here in earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e., the prayer for amendment was a belated one, we are 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 Procedure, 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. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment. "

13. I am of the view that the said judgment aptly applies to the facts of the present case and the Trial Court has correctly allowed the amendment application thereby rendering substantial justice. Hence, I am of the view that there is no infirmity in the order of the trial Court and I am not inclined to interfere with the same.

14. In the result, the order of the learned Principal District Munsif, Erode dated 14.7.2015 made in I.A.No.498 of 2015 in

O.S.No.471 of 2014 is confirmed and the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2015

Index:Yes/No
sbi

To

The Principal District Munsif,
Erode.

D.HARIPARANTHAMAN,J.

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C.R.P (PD) No.3942 of 2015

DATED: 6.10.2015