

Application Nos. 2773 and 2774 of 2013
and Application No. 2330 of 2014
in
C.S. No. 380 of 1997

PUSHPA SATHYANARAYANA, J.

Arulmighu Karaneeswarar Temple, Mylapore, Chennai – 4, governed by the Hindu Religious and Charitable Endowments Department, represented by its Executive Officer, has taken out these applications seeking certain amendments to the plaint.

2. Heard Mr. S. Subbiah, learned counsel appearing for the applicant / plaintiff and Mr. V. Narayanaswami, learned counsel for the respondents / defendants and perused the records.

3. As per the plaint, the plaintiff is an ancient temple owning a vast extent of lands in the City of Madras and even as per the revenue records, the ownership of the suit schedule properties is in the name of the temple. The defendants are alleged to have entered into the suit properties and are running an educational institution under the name of South Indian Educational Trust College [SIET] by putting up construction. Hence, based on the revenue records and the direction of the Commissioner, Hindu Religious and Charitable

Endowments Department, the applicant / plaintiff filed the above suit C.S. No. 380 of 1997 seeking for direction to the defendants to deliver vacant possession of the suit schedule property after removing superstructure put up by them and for costs.

4. Resisting the plaint, the defendants filed written statement denying ownership of the temple in respect of the suit properties. The defendants also claimed that they have been in possession of the properties pursuant to an unregistered sale deed and sought for dismissal of the suit.

5. In view of the denial of the right and title of the plaintiff temple by the defendants, the plaintiff was constrained to file the present applications seeking the following amendment:-

(i) Application No. 2773 of 2013 is filed seeking to amend the prayer in the suit as "to declare the plaintiff is the absolute owner of the schedule mentioned property".

(ii) Application No. 2774 of 2013 is filed seeking to amend the prayer in the suit as "to direct the defendants, their men or their agents to deliver vacant possession of the suit property after removing all the superstructures put up by them".

(iii) The plaintiff also filed Application No. 2330 of 2014 seeking to amend the plaint by adding certain paragraphs as mentioned therein to show that the claim of the temple for recovery of possession and other reliefs are not extinguished in view of amended Section 109 of the Hindu Religious and Charitable Endowments Act and also with regard to maintainability of the suit.

6. In the affidavit filed in support of the applications, it is contended that though the suit was filed in the year 1997 and the defendant had filed the written statement in the year 2001 denying the title of the plaintiff, the amendment application could be filed only in the year 2013. The reason assigned by the plaintiff is that the suit was dismissed for default in the year 2006 and was subsequently restored to file. As the erstwhile counsel did not take any action for amending the plaint seeking the relief of declaration, there was a delay. Besides, the counsel himself died in the year 2010 and that it was also not known to the plaintiff. Only when the plaintiff gained knowledge about the death of their counsel, the papers were collected and handed over to the present counsel, who had advised for the present amendments sought for.

7. The said applications were resisted by the defendants contending that the applications themselves are not maintainable as the same are filed after the passage of seven years from the date restoration of the suit. The defendants also contended that the accrued rights would be defeated by permitting the amendments of the plaint. It was also submitted that there is no just and sufficient cause shown by the plaintiff for the long delay. Hence, they prayed for dismissal of the applications.

8. The only question that is to be decided is whether the applications for amendments have to be allowed as prayed for.

9. At the outset, it is to be pointed out that the Hon'ble Supreme Court as well as the High Courts, time and again, in a catena of judgments, have held that the Court should be liberal in allowing an amendment application. It would also be relevant to pinpoint at this juncture that a plain reading of Order VI Rule 17 CPC would make it amply clear that an amendment can be made at any stage of the suit. The present applications, being petitions for amendment of plaint, for better understanding of the case, Order VI Rule 17 CPC is usefully extracted below:-

“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:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. The first part of the relief is clear that an amendment can be allowed to be made by either party at any stage of the proceedings for determining the real question in controversy. But the said rule is subject to the proviso to the Rule. Even if a party seeking amendment satisfies the Court that inspite of due diligence, the relief could not be asked for before the commencement of the trial and the Court is satisfied about the explanation, still the party seeking amendment has to satisfy the proviso. Such amendments seeking determination of the Rule and question of controversy between the parties shall be permitted to be allowed liberally if the same is sought for before the commencement of the trial. The simple reason is that the opposite

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party will not be prejudiced because of the amendment as he will have an opportunity of meeting the amendment sought to be made.

11. In the instant case, originally, the plaintiff had sought for recovery of possession of the suit properties based on their ownership. However, when the defendant denied the title of the plaintiff, to avoid any hyper technical plea, the amendment for declaration of title is sought for in one of the present applications. No doubt, while allowing an amendment, the merits of the case cannot be gone into. The proviso to Order VI Rule 17 CPC makes it clear that an amendment cannot be allowed after the commencement of the trial unless the Court comes to the conclusion that inspite of due diligence of the party, it could not have been raised before the commencement of the trial. The proviso may not be applicable to the present case because admittedly, the trial has not commenced. However, as stated earlier, the suit was dismissed for default once and it was restored to file and thereafter, there was a change in the counsel for the plaintiff and the applications were filed before the commencement of the trial.

12. It is well settled principle that an amendment of prayer can be allowed as a liberal approach has to be given in granting a

prayer for amendment. While allowing the amendment, the Court has to only look into the fact whether serious injustice or irreparable loss would be caused to the defendant if the prayer for amendment is not *bona fide* one. Insofar as amending a written statement is concerned, the Courts can be very liberal as it is open to the defendant to take inconsistent pleas. However, the plaintiff cannot be permitted to amend the plaint with the same liberty as it may cause prejudice to the interest of the defendant. Viewing in the said perspective, it has to be seen whether the amendments sought for by the plaintiff in the present applications can be allowed or not.

13. Insofar as the case on hand is concerned, admittedly, the trial has not commenced. The reason given by the plaintiff for the delay, in the considered opinion of this Court, is acceptable as the plaintiff, being a temple governed by the Hindu Religious and Charitable Endowments Department, was not aware of the death of the counsel and only after the knowledge of the counsel's demise, the present counsel, who had advised for the relief sought for, has been engaged. The amendments now sought for are with regard to the prayer of declaration of title and the maintainability of the suit, which do not substantially change the case of the plaintiff. The proposed

amendments also do not constitute an addition of new cause of action but they only amount to adding of facts which is already on record.

14. In support of the contention that an amendment application cannot be dismissed automatically, the learned counsel appearing for the applicant / plaintiff seeks in aid of the decision of the Hon'ble Supreme Court in ***Sampath Kumar vs. Ayyakannu and another [2003 – 2 – L.W. 21]*** which has observed that a liberal approach has to be given when the amendment is sought for seeking appropriate relief.

15. The only contention of learned counsel for the defendants is that the amendment sought for is belated and as such, the relief asked for is barred by limitation.

16. As a general rule, an amendment can be declined if a fresh suit on the amended claim is barred by limitation on the date of application. No doubt, the merits of the case cannot be canvassed in the application under Order VI Rule 17 CPC. The Courts also must not refuse the *bona fide*, legitimate and necessary amendments. The object of Order VI Rule 17 CPC is to allow either party to amend pleadings on such terms as may be just and sufficient. However, the

Courts cannot take a hyper technical approach while deciding the amendment application. Liberal approach should be the general rule in deciding the amendment. Normally, the amendments are allowed to avoid multiplicity of proceedings.

17. Learned counsel for the plaintiff also contended that immediately on coming to know of the necessity of the amendments, the plaintiff temple has taken out the applications and in this regard, he placed reliance on paragraphs 9 and 10 of the judgment of the Hon'ble Apex Court in ***Sampath Kumar vs. Ayyakannu and another*** (cited supra) wherein Their Lordships have observed as follows:-

Para 9 : *“Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the*

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commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

Para 10: *An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed (See observations in *Siddalingamma and Anr. Vs. Mamtha Shenoy* - (2001) 8 SCC 561 = 2002 – 1 – L.W. 600)."*

18. Learned counsel appearing for the plaintiff also placed reliance on the following decisions:-

- (i) ***P. Sivasubramanian and another vs. R.Saravanan and another [(2010) 1 MLJ 510]***

- (ii) ***Muthuvel vs. Ponnusamy and others [2011 (2) MWN (Civil) 259]***

19. Per contra, learned counsel appearing for the defendants / respondents had placed reliance on the decision of the Hon'ble Supreme Court in ***Gurdial Singh and others vs. Raj Kumar Aneja and others [AIR 2002 SC 1003]***.

20. The said decision is not applicable to the facts of the present case as any amendment that is allowed would date back to the date of original plaint. As observed in ***Sampath Kumar's case*** (cited supra) on which reliance is placed on by the plaintiff, the amendment permitted shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed.

21. The plaintiff is a temple which is governed by the provisions of the Hindu Religious and Charitable Endowments Act, 1959. Insofar as the limitation aspect is concerned, the learned counsel placed reliance on Section 109 of the Act, which reads as follows:-

“109. Central Act 36 of 1963 not to apply for recovery of properties of religious institution.-- Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property.”

The present suit being one for recovery of possession and the relief of declaration is sought for, I am of the considered view that the application of Limitation Act will not arise.

In view of the foregoing discussion, these applications are allowed permitting the applicant / plaintiff to carry out the amendments in the plaint. The defendants are at liberty to file written statement after the receipt of the copy of the amended plaint.

12 – 01 – 2015

Note to Office:-

Registry is directed to carry out the amendments sought for in the present applications as ordered above.
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PUSHPA SATHYANARAYANA, J.

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2774 of 2013 and
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in

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