



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16/2/2015

C O R A M

WEB COPY

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD(MD) No.1406 of 2011

Hindu Nadar High School
belonging to Hindu Nadar Uravinmurai Sangam
rep. By Mr.Duraipandi Nadar
N.vedapatti Village
Ettayapuram Taluk
Thoothukudi District. ... Petitioner

Vs

V. Balakrishnan ... Respondent

Petition filed under Article 227 of the Constitution of India against the order dated 18/2/2011 passed in the application in I.A.No.15 of 2011 in O.S.No.21 of 2007 by the learned Subordinate Judge, Kovilpatti.

For petitioner ... Mr.J.Barathan
For respondent ... Mr.V.Karthikeyan
for Mr.V.Perumal

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O R D E R

This Civil Revision Petition is filed against the order refusing to allow the pretrial amendment.

2. The plaintiff in the suit is the petitioner herein.

3. The plaintiff is a High school run by Hindu Nadar Uravin Murai Sangam. The suit is filed for declaration and mandatory injunction. According to the plaintiff, the suit property was purchased in the year 1933. The suit property was used for the purpose of running the Hindu Nadar High School. The vacant portion on the northern side is also used as the playground for the School. While so, the defendant, who has got no right or title over the property had encroached upon the north west portion and planted wooden pillars and erected a temporary shed in the year 2007 while the School was closed for summer vacation. Despite several request made by the School authorities, the defendant did not heed to the same. Hence the suit was filed.



4. The defendant also had filed a written statement denying the right and title of the plaintiff. Along with the plaint, the plaintiff had also filed I.A for appointment of a Commissioner and the Commissioner also has filed his plan and report. Now, the plaintiff had filed I.A.No.15 of 2011 for amending the plaint. It is stated by him in the affidavit that the suit was laid by the School with the documents that were available on hand. Later, when they were searching for other documents relating to the suit property, they could lay their hands on a document dated 3/1/1945 which was purchased by the then management under Document No.3/45. The said property was purchased under the document has been used as the playground for the School and this has been shown as the second schedule in the suit property.

5. The plaintiff also has sought for certain amendments based on the report of the Commissioner. As the Commissioner has specifically noted down in the report that the defendant had encroached a certain portion of the suit property.

6. This was resisted by the defendant by filing his counter. The learned Sub-Judge, Kovilpatti, after hearing both sides had dismissed the application on the ground that the amendment sought for would change the cause of action. Aggrieved by the said order, this Civil Revision has been filed by the plaintiff/petitioner.

7. Heard both sides.

8. The learned counsel for the petitioner contended that the amendment though appears to be a little long does not in any way change the character of the property nor changes the cause of action. It is only the improvement of the plaint filed originally. In the affidavit filed in support of the application, in paragraph 9, the petitioner has delineated the details of the amendment sought for. The first of the amendment sought for is regarding the inclusion of the averment about the sale dated 3/1/1945.

9. It is the contention of the petitioner that though the property under the sale deed has been included in the suit schedule, the document could be obtained by them only subsequently. Therefore, the petitioner wanted to include the pleading regarding the said document also.

10. Secondly, after the report of the Commissioner, who has reported that the defendant had encroached upon 12.2 metres east west and 5.2 metres north south and based on the report of the Commissioner, the plaintiff also wanted to amend the plaint about the encroachment of the defendant. This was objected to by the learned counsel for the defendant.



11. The respondent counsel objected that the report of the Commissioner would clearly show that it is only on the instruction of the plaintiff, the encroachments have been mentioned by the Commissioner in his report and he has not independently applied his mind or prepared the report. Therefore, he cannot be permitted to amend the plaint.

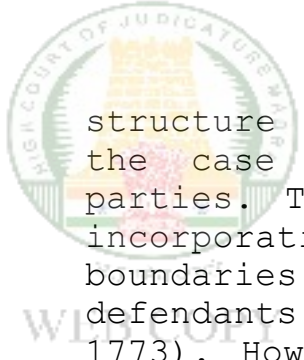
12. The petitioner's counsel contended that even an amendment can be allowed based on Advocate Commissioner's report as long as it does not alter the nature and character of the suit so as to bring in a new cause of action. In support of his contention, the learned counsel relied on 2007 (1) MLJ - 777 (KODIAMMAL Vs. SARANGAPANI), wherein in paragraphs 5 and 6, it has been held and observed as follows:-

"5. In the plaint itself it was specifically stated by the revision petitioner that the measurements of the property were not given exactly and the same would be amended if the report of the Advocate Commissioner reveals difference in the measurements. Therefore, the learned counsel for the petitioner is right in contending that the proposed amendment was not something new which would alter the nature and character of the suit. The trial court rejected the prayer on the ground of delay as the amendment was filed after two years from the date of the submission of the report by the Advocate Commissioner.

6. When the proposed amendment does not alter the nature and character of the suit to bring in a new cause of action, the courts ought to be liberal in granting the prayer for amendment for effective adjudication. Further, it would also avoid multiplicity of proceedings.

13. The learned counsel also relied on 2010 (3) MWN (Civil) page 1 (SRIDHAR BABU Vs. 1. MUTHULAKSHMI AND 2 OTHERS), wherein in paragraph No.7, it has been held as follows:-

Under Rule 17 Order 6 CPC, 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 question in controversy between the parties. Proviso to the Rule states that no application for amendment shall be allowed after the trail has commenced, unless the Court is satisfied that the party could not have raised the matter before commencement of trail. As in the present case, trail is yet to commence, the Proviso to the Rule is not attracted. Undoubtedly, the court is empowered to allow amendment "at any stage" of the proceedings is far more elastic and is not circumscribed or limited by any condition as long as the amendment sought for does not change the basic



structure of the suit. It could be allowed for just decision of the case and to determine the real controversy between the parties. This Court has held that the amendment sought for, for incorporating additional survey numbers for proper description of boundaries of the suit property does not cause prejudice to the defendants and the amendment has to be allowed. (AIR 2009 NOC 1773). However, in the case on hand there is no addition of any survey numbers by way of the amendment, but only the measurement of the construction made.

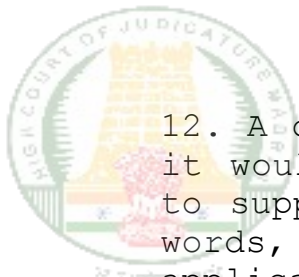
14. In view of the above decisions, the learned counsel for the revision petitioner contended that after the report submitted by the Advocate Commissioner, the measurements have been included and the same does not change the cause of action or introduced a new case. Therefore, it cannot be stated that the amendment alters the cause of action and the amendment ought to have been allowed.

15. The plaintiff also has sought for amendment based on the cancellation of the patta issued in favour of the defendant. It is stated by the plaintiff that the appeal in Na.Ka.No.D2/101680/2007 filed by him before the District Revenue Officer challenging the issuance of patta in favour of the defendant was allowed on 13/1/2009. As the said fact is only subsequent to the filing of the suit, the plaintiff is bringing it to the knowledge of the Court by way of amendment. No doubt, even otherwise, it can be brought on record by filing a reply statement.

16. Thirdly, it was contested by the plaintiff that there is no change in the cause of action by allowing this amendment for which purpose, the learned counsel relied on 2012 (4) CTC - 308 (THE CHURCH OF CHRIST CHARITABLE TRUST & EDUCATIONAL CHARITABLE SOCIETY, rep. BY ITS CHAIRMAN VS. PONNIAMMAN EDUCATIONAL TRUST, rep. BY ITS CHAIRPERSON/MANAGING TRUSTEE, wherein in paragraph Nos.8 to 10, it has been held as follows:-

8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

9) In A.B.C. Laminart Pvt. Ltd. & Anr. vs. A.P. Agencies, Salem (1989) 2 SCC 163, this Court explained the meaning of "cause



12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.?

10) It is useful to refer the judgment in Bloom Dekor Ltd. vs. Subhash Himatlal Desai & Ors. (1994) 6 SCC 322, wherein a three Judge Bench of this Court held as under:

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill, 1873 LR 8 CP

107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.? It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

17. As per the above decision, even if the plaint is allowed and the cause of action may change, it is for the plaintiff to support his right. Therefore, any fact which is subsequent to the filing of the suit or any action done by the defendant subsequent to the suit, has to be introduced in the plaint without which no cause of action can possibly be pleaded. It is not only the actual act committed by the defendant, but also the other facts touching upon the circumstance which should be included.

18. The learned counsel for the petitioner also relied on the decision reported in 2008 (3) L.W - 86 (1. CHURCH OF SOUTH INDIA TRUST ASSOCIATION, TIRUCHIRAPALLI - THANJAVUR DIOCESAN COUNCIL REPRESENTED BY ITS DIOCESAN



TREASURER, Mr.R.SURESHKUMAR AND 3 OTHERS Vs. 1. KOVILPILLAI AND 8 OTHERS, wherein this Court had an occasion to consider several judgments on this aspect and settled the legal principles in allowing the amendment.

19. The learned counsel for the respondent, who appears for the defendant objected to the allowing of the amendment on the following grounds:-

(i). The suit is one being for mandatory injunction and the amendment application having filed on 6/12/2010 which is beyond three years, after the filing of the suit is barred by limitation.

(ii). The new facts that are introduced by way of amendment change the character of the suit and the cause of action.

(iii). The change of office bearers in the plaintiff School cannot be the reason for filing the amendment application.

(iv). The reading of the report of the Commissioner would go to show that he has only reproduced the version of the plaintiff and he has not given any independent report.

20. For all the above said reasons, the learned counsel for the respondent prayed for the dismissal of the revision.

21. In support of his contention, the respondent also relied on 2009 (10) SCC - 84 (REVAJEETU BUILDERS AND DEVELOPERS Vs. NARAYANASWAMY AND SONS AND OTEHRS), wherein in paragraph No.18, it has been observed as follows:-

"The original plaint expressly so avers and relies on Section 65 of the Contract Act clearly admitting that the sale deed has become void. This admission is now sought to be got rid of and the sale deed is sought to be asserted as valid. It was submitted that the appellant cannot, therefore, seek any amendment of the plaint relying on the circumstances as to the earlier decision having been overruled by seeking amendment of the plaint. This has the effect of changing the character of the suit and also omitting an admission made."



22. Following the above decision of the Supreme Court, this Court has also held in 2011 (2) CTC - 28 (1. N. LALITHA AND SIX OTHERS Vs. 1. MANUJOTHI ASHRAMAM, rep. BY ITS PRESIDENT, DEVA ASEER LAWRIE, SATHYANAGARAM, ODAINARICHAN VIA PAPAKUDI, TIRUNELVELI DISTRICT AND 2 OTHERS), wherein in paragraph 18, it has been held as follows:-

'18. Now, coming to the next question regarding the character and nature of the suit, nowhere in the plaint there is any averment that the plaintiff has been in possession of the properties which are the subject matters of the sale deeds in question. There is no prayer for injunction to protect the alleged possession of the plaintiff also. But by means of amendment, such prayer is sought to be introduced. This surely changes the character of the suit. This also has not been properly taken note of by the learned District Munsif."

23. The learned counsel also relied on 2009 (3) SCC - 467 (ALKAPURI COOPERATIVE HOUSING SOCIETY LIMITED Vs. JAYANTIBHAI NAGINBHAI (DECEASED) THROUGH Lrs, wherein in paragraph No.18, it has been held as follows:-

"There cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit. We have noticed hereinbefore that the plaintiff-respondents in their application for amendment of the plaint themselves accepted the fact that the appellant herein not only had filed a suit prior in point of time to the suit filed by the deceased respondent but had also obtained an injunction as a result whereof they did not obtain effective possession of the suit land. If that be so, in our opinion, the plaintiff-respondents in effect and substance are seeking to alter the basic structure of the suit which in the case of Sampath Kumar (supra) itself has been held to be impermissible.

24. Now, the question that has to be decided is whether the amendment is to be allowed or not?

25. The purpose of Order 6 Rule 17 of the Code of Civil Procedure is to allow either party to alter or amend the pleadings in such a manner and on such terms as may be just. Though the power to allow the amendment is wide, the same can be exercised at any stage of the proceedings in the interest of justice on the basis of several guidelines laid down by various High Court and that of the Supreme Court. No doubt, the amendment ~~can be allowed as a matter of right under all circumstances.~~ But the Courts also cannot take a hyper technical approach. Liberal approach to the amendment of pleadings is a general rule

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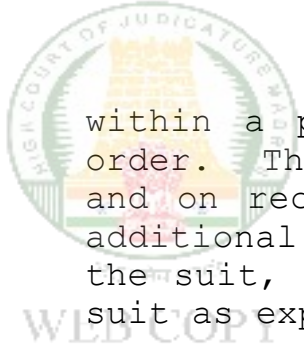
“மேலும் 3.1.1945 ல் வாதீ கிரையம் பெற்ற காலம் முதலும்”

This para relates to the cause of action paragraph and by adding the above said phrase does not change the cause of action because the plaintiff is only pleading about the purchase of the property in favour of the School. So far as the objection regarding the amendment after the report of the Commissioner is concerned, it is only a fact subsequent to the suit and the same can be allowed.

26. In principle, the Court has to see whether the amendment is necessary to decide the real controversy. Therefore, the first condition should be whether the amendment is necessary for the determination of the real controversy in dispute. If that condition is not satisfied, then the amendment cannot be allowed. Based on this context which if applied to the case on hand, it can be seen that it is not an individual but an educational institution which is trying to establish the right and title of its property. The plaintiff is only trying to enhance the pleadings which had come into its knowledge after the institution of the suit without changing the character of the suit or changing the cause of action. While allowing the amendment is discretion of the Court, care must be taken to protect the interest of the defendant. The Courts must take care before allowing the amendment that no prejudice or injustice would be caused to the other side. If the other side can be compensated by cost, no injustice would be caused. As the powers of the Court in allowing the amendment is very wide as it can be exercised at any stage, such power has to be exercised properly in the interest of justice.

27. The amendment sought for now is a pre-trial amendment as it is conceded by both the counsels that the trial has not yet been commenced. But however, the amendment sought for by the plaintiff is four years after the suit has been instituted. The delay and inconvenience caused to the defendant should therefore be compensated by paying costs.

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within a period of four weeks from the date of receipt of the order. The plaintiff is directed to file the amended plaint copy and on receipt of the same, the defendant is at liberty to file additional written statement. Considering the long pendency of the suit, the Sub-Judge, Kovilpatti is directed to dispose of the suit as expeditiously as possible.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Subordinate Judge, Kovilpatti
- 2.The Principal District Judge, Thoothukudi

+One cc to Mr.V.Perumal, Advocate, SR.No.7134

+One cc to Mr.T.R.Jeyapalam, Advocate, SR.No.7093

mvs

RL/5 c- 25/2/2015

C.R.P.PD (MD) No.1406 of 2011

16/2/2015