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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16 - 02 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (PD) (MD) No. 1799 of 2011

Esakkiammal (Died)

1. Esakki Pazhani

2. Nainar

.. Petitioners/Petitioners 2 & 3/
Petitioners 2 & 3

Vs.

1. Balasubramanian

2. Lakshmi

3. Paramanandhan

.. Respondents/Respondents/Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India against the order passed in I.A. No. 614 of 2011 in O.S. No. 674 of 2006 dated 08.8.2011 on the file of the 1st Additional District Munsif, Tirunelveli.

For Petitioners

: Mr.H.Arumugam

For Respondents

: Mr.M.P.Senthil

for R.R.1 and 2

No appearance for R.3.

ORDER

This Civil Revision Petition arises out of the order dated 08.08.2011 passed by the 1st Additional District Munsif, Tirunelveli, in I.A. No. 614 of 2011 in O.S. No. 674 of 2006 refusing to permit the petitioners to amend the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. The petitioners herein, who are the plaintiffs, filed suit O.S. No. 674 of 2006 for declaration that the suit lane is a common lane and for consequential injunction restraining the defendants from disturbing their peaceful usage and also for mandatory injunction to remove the encroachment on the suit lane.



3. As per the plaint, the suit lane is a common lane, which belonged to both the plaintiffs as well as the defendants. The first schedule property is a lane situate on the north of the plaintiffs' house and there is another lane on the southern side of the plaintiffs' house which has been described as 5th item of the parent deeds of the plaintiffs. It is also admitted that there is a lane situated on the southern side of the plaintiffs' property. The dispute is only with regard to the northern side lane. The northern side lane has been described as first schedule in the suit property. But in the plaint, it had been inadvertently mentioned as 5th item of the parent deeds. This, according to the plaintiffs, is only a mistake which had crept in, which is neither willful nor wanton and if the petition is allowed, it would not alter the character of the case or would change the cause of action. Hence, the amendment petition was filed. It is also stated by the plaintiffs that earlier, an application in I.A. No. 236 of 2011 was filed for withdrawing the suit with liberty to file a fresh suit on the same cause of action but the same was dismissed. Hence, the amendment application was filed to cure the normal defect.

4. The said application was resisted by the respondents / defendants contending that it is only an exercise of procrastination as the suit had already been posted in the special list for trial. It is their further contention that even in the written statement, the said discrepancy was pointed out by the defendants and that despite having knowledge about the mistake committed in the plaint, the amendment application has been filed at a very belated stage. Hence, the defendants prayed for dismissal of the application as the same is not *bona fide*.

5. The trial Court / 1st Additional District Munsif, Tirunelveli, after elaborately discussing the pros and cons, observed that such an amendment will cause serious prejudice to the respondents/defendants and will change the nature and character of the suit and accordingly, dismissed the application. Aggrieved by the said decision, the plaintiffs / petitioners have come forward with the present Revision Petition.

6. Learned counsel appearing for the petitioners submitted that the amendment sought for is only with regard to a mistake that had crept in and that the Court below has failed to exercise the jurisdiction vested in it in law under Order VI, Rule 17 CPC.

7. Learned counsel appearing for the respondents submitted that when the suit is posted for the evidence of D.W.2, the amendment cannot be allowed because P.W.1 and D.W.1 were already cross-examined on the discrepancy now pointed out by the



plaintiffs. Therefore, if the petition is allowed, the respondents would be greatly prejudiced and this type of amendment after the trial cannot be entertained.

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8. Heard the learned counsel appearing for the petitioners and the respondents 1 and 2.

9. The only point that has to be decided before this Court is whether the amendment can be allowed or not.

10. Before considering the factual details and the materials placed by the plaintiffs praying for amendment of their plaint, it is useful to refer Order VI Rule 17 which is as under:-

*"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 in spite of due diligence, the party could not have raised the matter before the commencement of trial."

11. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in



controversy between the parties provided it does not cause injustice or prejudice to the other side.

12. It would not be out of place for this Court to make a mention at this juncture that the Hon'ble Apex Court in a catena of decisions, has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice.

13. I have been taken through the pleadings in this case and also the affidavit filed in support of the amendment application. It is seen that it is only a mistake which has been wrongly described in the plaint. Realising the said mistake, the plaintiffs have filed an application for withdrawal of the plaint with liberty to file a fresh suit on the same cause of action as it was only a formal defect. Unfortunately, the same was dismissed after contest and immediately, the application for amendment has been filed by the plaintiffs. It is also seen that in the meanwhile, the trial had commenced and plaintiffs' side evidence was over and on the side of the defendants also, D.W.1 has been examined. While the cross-examination of D.W.2 is in progress, the above application has been filed.

14. In a matter of this nature, the Court only has to aim at trying the suit on merits and ensure that the rule of justice prevails. For this reason, the true facts have to be placed before the Court so that the Court can have all the relevant information in coming into a conclusion. In these circumstances, sometimes, the plaints are permitted to be amended.

15. The Court's discretion to amend the plaint normally lies on two conditions. Firstly, no injustice should be done to the other side and secondly, the amendment must be necessary for the purpose of determining the question in controversy between the parties. In fulfilling these two conditions, the Court only has to balance the interest of the parties, who are fighting for justice. For this purpose, the proviso to Order VI Rule 17 CPC was introduced. As stated earlier, though no application for amendment shall be maintained after the trial has commenced, but, however, the proviso gives the discretionary power to the Court to amend the plaint when 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.

16. In the case on hand, the defendants themselves had already pointed out in the written statement about the discrepancy that had crept in, in the pleadings. It is also not in dispute that immediately, the plaintiffs had filed an application to



withdraw the suit and also sought for liberty to file a fresh suit on the same cause of action as it was felt that the defect is only formal. But the said application came to be dismissed after contest. One cannot deny that when the defendant has pointed out the mistake in the written statement, it is usual that the plaintiff comes up with an application for amendment. Though in this case, the plaintiffs thought it fit to withdraw the suit and file a fresh suit, they were not allowed to do the same. While so, it is quite obvious that if the plaintiffs are allowed to proceed further without the amendment, it would result in grave injustice to the party which has been trying desperately to correct the mistake which had crept in initially. This, perhaps, is the situation that has been contemplated by the legislature while introducing the proviso to Order VI Rule 17 CPC.

17. As stated earlier, the plaintiffs have complied with the two conditions for allowing their amendment. Therefore, in this case, the plaintiffs had filed the applications to rectify the mistake that had crept in with due diligence. But the time consumed in the process has taken to this stage where the trial has commenced. It is, therefore, such a mistake, in the interest of justice, has to be allowed to be rectified lest the plaintiffs have to suffer on account of a patent mistake committed by them. It is always open to the plaintiffs to substantiate their contention by way of amendment if they genuinely have a grievance.

18. The basis on which the Court below refused the amendment is that the application for amendment was belated and it was likely to cause great prejudice to the defendants in their defence. The Court cannot shirk its duties. The predominant interest of the Court should be to render justice and allow amendments in order to determine the real question in controversy between the parties. From the facts of the case, it is clear that the amendment is necessary in the interest of justice and also to determine the real question in controversy between the parties. There is absolutely no question of a contradictory case being sought to be set up by the plaintiffs by way of the amendment, nor has he sought to change the cause of action thereby. Thus it is clear that the Court below has not properly exercised the discretion vested in it by law under Order VI Rule 17 CPC.

19. In the result, the amendment to the plaint is allowed on the following terms.

- (i) The plaintiffs are directed to serve amended copy of the plaint to the defendants and the defendants are given liberty to file an additional written



statement, if any, within a period of two weeks thereafter.

WEB COPY (ii) As the trial had already commenced and as D.W.2 is in the box, the defendants have to be compensated sufficiently for the hardship they are put to. Accordingly, the plaintiffs are directed to pay a sum of Rs.2000/- (Rupees Two Thousand only) to the defendants within a period of four weeks from the date of receipt of a copy of this order.

No costs. Since the suit is of the year 2006, learned 1st Additional District Munsif, Tirunelveli, is directed to dispose of the suit as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE

/True Copy/

Sub Assistant Registrar

To

The I Additional District Munsif , Tirunelveli

+1cc to Mr.M.P.Senthil, Advocate Sr.No. 7572

+1cc to Mr. H.Arumugam, Advocate Sr.No. 7123

gri/mvs

AA/27.02.2015/6p- 4c/

Pre-Delivery order in

C.R.P. (PD) (MD) No. 1799 of 2011

Delivered on 16 - 02 - 2015