

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.1846 of 2011
and
M.P.No.1 of 2011**

Palani (deceased)

Sakunthala

(brought on record as Lrs of the
deceased Petitioner vide order of
Court dated 07.12.2015 made in
M.P.1/15)

.. Petitioner

Vs.

1.Susela

2.Arumugam

3.Sundaram

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order passed in
I.A.No.280 of 2011 in O.S.No.190 of 2002 dated 01.03.2011 on the
file of the Learned Additional District Munsif, Gingee.

For Petitioner	: Ms.J.Jani Jeba Mala for M/s.N.Suresh
For Respondent-1	: No Appearance
For Respondent Nos.2 & 3	: Ms.G.Susayana for Mr.P.B.Ramanujam

ORDER

The Petitioner has filed the present Civil Revision Petition before this Court as against the order dated 01.03.2011 in I.A.No.280 of 2011 in O.S.No.190 of 2002 passed by the Learned Additional District Munsif, Gingee.

2.Notice was served to the First Respondent as early as on 13.07.2011. Today, when the Revision has been taken up for final disposal, there is no appearance on behalf of the First Respondent either in person or through counsel.

3.The Learned Additional District Munsif, Gingee, while passing the impugned order dated 01.03.2011 in I.A.No.280 of 2011 in O.S.No.190 of 2002 [filed by the Revision Petitioner, Palani (since deceased) under Or.6 R.17 of the Civil Procedure Code], had

among other things, at paragraphs 13 to 15 had observed as under:

"13.Further, proviso, to order 6 Rule 17 says No application for amendment shall be allowed after the trial has commenced unless the Court comes to conclusion inspite of due diligence, the party could not have raised the matter before the commencement of trial.

14.In the case on hand though the petitioner/plaintiff is aware of the allegations made in the written statement he did not taken any diligent steps to amend the plaint.

15.Furthermore, if the proposed amendment is allowed, would not only after the structure of the suit but also change cause of action. Therefore, parties are required to be let in fresh trial. Then, it would cause undue hardship to the Respondents."

and finally, dismissed the petition with costs.

4.Assailing the dismissal of the order dated 01.03.2011 in I.A.No.280 of 2011 in O.S.No.190 of 2002 passed by the trial Court, the Revision Petitioner (during his lifetime had preferred the present Civil Revision Petition before this Court). After his death, the

Revision Petitioner/Plaintiff's legal heir was brought on record as per order of this Court dated 07.12.2015 made in M.P.No.1 of 2015 in CRP.No.1846 of 2011.

5.The Learned counsel for the Petitioner submits that the trial Court had committed a mistake in arriving at a conclusion that the application for amendment sought for in the main suit was a belated one.

6.The Learned counsel for the Revision Petitioner urges before this Court that the trial Court should have seen that the I.A.No.280 of 2011, seeking for amendment of plaint was filed, wherein a recovery of possession was sought for and by permitting the amendment, the cause of action and the frame of the suit would not change. Unfortunately, these vital aspects were not taken into account by the trial Court at the time of passing the impugned order in dismissing the I.A.No.280 of 2011 in O.S.No.190 of 2002 on 01.03.2011.

7.The strenuous plea taken on behalf of the Revision Petitioner is that there is no absolute rule, after commencement of

trial in a suit, an amendment application by a party/litigant cannot be projected.

8.Lastly, it is the submission of the Learned counsel for the Petitioner that the trial Court should have taken a lenient and liberal view and also a broader outlook while dealing with the I.A.No.280 of 2011 should not have dismissed the application based on either technicalities or hyper-technicalities.

9.Before the trial Court, it is represented before this Court that the Second Respondent herein namely, Arumugam (Third Respondent before the trial Court), filed a counter in I.A.No.280 of 2011 in O.S.No.190 of 2002 (which was adopted by the Respondent Sushela)

10.It comes to be known from the affidavit in I.A.No.280 of 2011 in O.S.No.190 of 2002 [filed by the Plaintiff (later deceased) under Or.6 R.17 of the Civil Procedure Code] the suit was filed by him stating that the suit property was in his enjoyment, for which the Third Defendant had objected by stating that it was in his enjoyment. Further, it was averred in the plaint that the suit

property was purchased by the Third Defendant from persons who had no title and is creating problems. Therefore, an amendment was sought for to the effect that as an alternative relief even if the property was in possession of the Third Defendant and by so doing, no prejudice would be caused to the other side.

11.The Revision Petitioner/Plaintiff had sought an amendment for an alternative relief to the effect that the property was ordered to be recovered from the Third Defendant.

12.It transpires that the trial Court had dismissed the I.A.No.280 of 2011 in O.S.No.190 of 2002 (filed under Or.6 R.17 of the Civil Procedure Code praying to amend the plaint) by means of an order dated 01.03.2011 primarily on the ground that the application for amendment was filed after the commencement of trial of the main suit. It is not in dispute that the Revision Petitioner during his lifetime had filed the suit in O.S.No.190 of 2002 on the file of the trial Court seeking a relief of declaration in respect of the suit properties in his favour and also sought for the relief of permanent injunction restraining the Defendants, their men or agents from interfering with the peaceful possession of the Plaintiff

in regard to enjoyment of the suit properties in question.

13. At this stage, it is brought to the notice of this Court that on the side of the Plaintiff, two witnesses were examined and after commencement of trial in the main suit, I.A.No.280 of 2011 (seeking amendment of plaint) was filed.

14. On behalf of the Respondents 2 and 3, it is the submission of the Learned counsel for the Respondents that the Third Respondent purchased the suit property as early as on 14.06.2002 and before that, the vendors of the Third Respondent purchased the suit property in the year 1977 and after 14.06.2002, the Third Respondent is in possession and enjoyment of the property.

15. It is to be noted that ordinarily, amendment of plaint is not allowed, if it changes the cause of action. Also, if the amendment of plaint sought for any given case is filed belatedly and that too, after commencement of the trial Court of the main suit, then, Court of Law is empowered to dismiss the said application as a belated one, ofcourse, based on the facts and circumstances of the given case which float on the surface.

16.As far as the present case is concerned, the ingredients of Or.6 R.17 of the Civil Procedure Code are very much attracted and since after commencement of the trial, the I.A.No.280 of 2011 was filed by the Plaintiff (Palani, since deceased). Added further, no plausible explanation was projected on the side of the Revision Petitioner as to why at the earliest point of time with due diligence the said application was not filed. This Court comes to an inescapable conclusion that the view taken by the trial court in dismissing the I.A.No.280 of 2011 in O.S.No.190 of 2002 dated 01.03.2011 does not require any interference in the hands of this Court sitting in Revision. Consequently, the Civil Revision Petition fails.

17.In the result, the Civil Revision Petition is dismissed and the impugned order dated 01.03.2011 in I.A.No.280 of 2011 in O.S.No.190 of 2002 passed by the trial Court is affirmed by this Court for the reasons ascribed in this Civil Revision Petition. Consequently, connected Miscellaneous Petition is also closed. No costs.

18. Since the suit is of the year 2002 and nearly 14 years have elapsed and also, this Court taking note of the yet another pivotal fact that the suit is in part heard stage, in the interest of Justice and Prudence, directs the Learned Additional District Munsif, Gingee, to dispose of the main suit within a period of three months from the date of receipt of a copy of this order (ofcourse, after providing adequate opportunities to the respective parties by adhering to the Principles of Natural Justice). The parties are directed to lend co-operation and assistance to the trial Court in regard to the completion of the main proceedings, within a time frame adumbrated by this Court. It is made quite clear that the dismissal of the Civil Revision Petition by this Court will not preclude the respective parties to raise/adjudicate all factual and legal pleas before the trial Court in O.S.No.190 of 2002, ofcourse, in the manner known to Law and in accordance with Law.

02.03.2016

Index : Yes
Internet : Yes

DP

To

- 1.The Additional District Munsif,
Gingee.
- 2.The Registrar (Judicial)
[for favour of Information &
to Watch and Report],
Madras High Court.

M.VENUGOPAL, J.

DP

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