

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.4973 of 2011
and
M.P. No.1 of 2011

K.Krishnan ... Petitioner/Petitioner/
Plaintiff

Vs

A.Valarmathi ... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.09.2011, made in I.A.No.432 of 2011 in O.S.No.195 of 2010, on the file of the Principal Sub Court, Salem.

For Petitioner : Mr.R.Siddarth
for M/s.T.R.Rajaraman

For Respondent : Mr.N.Manokaran

O R D E R

This Civil Revision Petition arises against the fair and decreetal order dated 15.09.2011, made in I.A.No.432 of 2011 in O.S.No.195 of 2010, on the file of the Principal Sub Court, Salem.

2.The petitioner herein filed O.S.No.195 of 2010, on the file of the Principal Sub Court, Salem. The revision petitioner entered into a registered sale agreement dated 02.07.2008, with the defendant in respect of the suit property for a sale consideration of Rs.8,00,000/-.

3.A written statement was filed by the defendant / the respondent herein, denying the allegations of the plaintiff.

4.The case was posted for cross-examination of PW1. At that stage, the petitioner came to know that the possession of the agreement property has not been asked for and by inadvertence, the expression "without interest" had been added in column (iii) of the prayer. In order to avoid this complication, the present amendment application is filed by the plaintiff / revisioner petitioner in I.A.No.432 of 2011 before the Trial Court.

5.A counter affidavit was filed by the respondent herein denying the allegations found in the affidavit filed in support of the Interlocutory Application. By an order dated 15.09.2011, the trial Court, partly allowed the Interlocutory Application and the petitioner was permitted to amend the plaint in respect of interest and insofar as the amendment regarding possession is concerned, the relief is dismissed.

6.Mr.R.Siddarth, learned counsel appearing for the petitioner would submit that the prayer for recovery of possession is an additional prayer, generally sought for in all the specific performance suits and that the proposed amendment will neither change the nature nor the character of the suit and therefore will not prejudice the rights of the defendant / respondent and that if the present amendment is not allowed, the plaintiff / revision petitioner has to file an another suit for recovery of possession after succeeding in the present suit for specific performance, which will lead to unnecessary multiplicity of proceedings.

7.According to the learned counsel for the respondent, even though partly allowed, it has rightly rejected the amendment regarding possession. Therefore, there is no reason warranting interference by this Court in this civil revision petition. Further, he submitted that the petitioner has filed the aforesaid I.A. belatedly. Therefore, this civil revision petition is liable to be dismissed.

8.Heard Mr.R.Siddarth, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel for the respondent.

9.By an order dated 15.09.2011, the trial Court partly allowed the relief prayed for by the revision petitioner and partly, it has rejected insofar it relates to amending the prayer for recovery of possession. The said prayer in the suit is to execute the sale deed in respect of the suit property in favour of the plaintiff. Therefore, the relief of prayer is under the provisions of Specific Relief Act. The Courts can grant relief of recovery of possession once suit is decreed for specific performance as has been held in Krishnamurthy Gounder

v. Venkatakrishnan and others reported in 2012 (1) CTC 823. Even though, the suit was decreed as prayed for, the recovery of possession was not included in the decree. This Court has held that in the suit of specific performance, even the decree is silent about the recovery of possession, the decree holder is entitled to possession as the party accrues right to grant relief of possession even in the absence of any such prayer as per the proviso to Section 22(2) of the Specific Relief Act.

10. The learned counsel for the respondent relying upon the judgment rendered in Vidyabai and others v. Padmalatha and another reported in (2009) 2 Supreme Court Cases 409, would submit 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. In the aforesaid decision, the application had been filed under Order 6 Rule 17 of C.P.C. seeking amendment to the written statement and another application to produce additional documents. Therefore, the facts of the above said decision of the Hon'ble Supreme Court will not apply to the present case.

11. In the present case, according to the learned counsel for the petitioner, the proof affidavit of PW1 was filed, but, the documentary evidence was not marked. Hence, there is no delay in filing the amendment application. Even, if the proof affidavit was filed by the PW1, the amendment application filed, in order to rectify the defect in the prayer, that too, is only a technical defect. Therefore, no prejudice is caused to the respondent herein, if the amendment sought for is allowed.

12. Order 6 Rule 17 of C.P.C. reads as follows:-

"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."

13. In the decision of the Hon'ble Supreme Court in North Eastern Railway Admn. Vs. Bhagwan Das: (2008) 8 SCC 511, it is held as follows:-

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Prigonda Hongonda Patil v. Kalgonda Shidgonda Patil which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

14. In the decision of the Hon'ble Supreme Court in Rajesh Kumar Aggarwal and Others v. K.K. Modi and others reported in (2006) 4 Supreme Court Cases 385, it was held as follows:-

"15. The object of the rule is that the 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. सत्यमेव जयते

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit,

proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. ... सत्यमेव जयते

20. ... A reading of the entire plaint and the prayer made thereunder and the proposed amendment would go to show that there was no question of any inconsistency with the case originally made out in the plaint. The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. There is a plethora of precedents pertaining to the grant or refusal of permission for amendment of pleadings. The various decisions rendered by this Court and

the proposition laid down therein are widely known. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice."

15. Though the proposed amendment is allowed, the basic structure of the suit will not change and there is no change in the nature of the relief claimed in the suit. In the judgment reported in 2012 (1) CTC 823 cited supra, it has been held that in a suit for specific performance, the decree holder is entitled to the relief of possession even in the absence of any such prayer as per the proviso to Section 22(2) of the Specific Relief Act. In the light of the said decision, no prejudice will be caused to the defendant/respondent herein if the application for amendment is allowed.

16. Therefore, I am inclined to pass the following order:

(i) the impugned order passed by I.A.No.432 of 2011 in O.S.No.195 of 2010 insofar as rejecting the relief of amendment of recovery of possession is concerned is hereby set aside and the trial Court is directed to permit the petitioner to amend the prayer in the plaint, within a period of four weeks from the date of receipt of a copy of this order.

(ii) this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

vs

To

The Principal Subordinate Court,
Salem.

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.27342
+1cc to Mr.N.Manokaran, Advocate, S.R.No.26689

CRP(PD).No.4973 of 2011
and
M.P. No.1 of 2011

NRJK(CO)
CA(15/06/2016)