

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated :25.04.2016**

**CAV ON :18.04.2016**

**CORAM**

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP(PD).No.1446 of 2013  
and  
M.P.No.1 of 2013**

1.R.A.Karunambal  
2.Kavinkumar

.. Petitioners

vs.

1.Loganathan  
2.Duraisamy  
3.Santhamani  
4.S.Senthilkumar  
5.Latharani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.12.2012 made in I.A.No.567 of 2011 in O.S.No.193 of 2008, on the file of the learned Subordinate Judge, Dharapuram.

For Petitioner

...M/s.N.Manokaran

For Respondents

...Mr.S.Thangavel for R1  
Mr.R.Subramanian for R3

**ORDER**

Heard Mr.N.Manokaran, learned counsel for the Revision Petitioner and Mr.S.Thangavel and Mr.S.Subramanian , learned counsel for the Respondents.

2. The procedure is meant to facilitate the ends of justice and not to defeat the same. The present case is a classic example of a procedural battle that has driven the Petitioners to file the present Revision Petition. In O.S.No.193 of 2008 was filed before the Subordinate Court Judge, Dharapuram, by the present Revision Petitioners i.e., R.A.Karunambal and Kavinkumar and also by Latha Rani against Arumugam, who is the husband of R.A.Karunambal and the father of Kavinkumar and Latha Rani. Loganathan who was the power agent of Arumugam was impleaded as the 2<sup>nd</sup> Defendant and Duraisamy, the subsequent purchaser of one portion of the suit property was impleaded as the 3<sup>rd</sup> Defendant in the Plaint filed on 24.11.2008. The prayer in the Plaint for partition and maintenance since the Plaintiffs have alleged that the 1<sup>st</sup> Defendant in the suit fell in bad company and became addicted to alcohol and accordingly has driven them away from the matrimonial home.

3. When the matter stood thus, the Plaintiffs filed in I.A.No.247 of 2010 in O.S.No.193 of 2008 under Order I Rule 10(2) and Section 151 of C.P.C seeking impleadment of two other respondents viz., V.Santhamani and S.Senthilkumar who happened to be the subsequent purchasers of the property. The said I.A was allowed by

the Subordinate Judge, Dharapuram by order dated 06.09.2010. In furtherance of the said order, the original Plaintiffs Nos.1 and 3 filed in I.A.No.699 of 2010 in O.S.No.193 of 2008 before the Subordinate Court seeking for transposition of the 2<sup>nd</sup> Plaintiff as the 4<sup>th</sup> Respondent since she was not Co-operating with the Plaintiffs. The said Application was allowed by the Subordinate Court by order dated 09.06.2011.

4. After the Order of the Trial Court in I.A.No.699 of 2010, the present Revision Petitioners have filed in I.A.No.567 of 2011 under Order VI Rule 17 and Section 151 of C.P.C seeking amendment of the Plaint. The said I.A was resisted by the Respondents stating that it is an abuse of process of law and the same has been filed with malafide intention and accordingly prayed that the same may be dismissed. The Subordinate Court by Order dated 07.12.2012 has dismissed the I.A by holding that it is not permissible for the Plaintiffs to amend the Plaint at the present juncture and accordingly dismissed the I.A., thereby depriving the Plaintiffs the right to amend the Plaint, inspite of there being impleadment of two parties and transposition of one plaintiff. Aggrieved by the same, the Petitioners have filed the present Revision Petition before this Court.

5. Mr.N.Manokaran, learned counsel for the Revision Petitioner assailed the Order passed in I.A.No.567 of 2011 by the Subordinate Court by stating that in view of the death of the 1<sup>st</sup> Defendant and in light of the transposition of the 2<sup>nd</sup> Plaintiff as the 6<sup>th</sup> Defendant, as a natural corollary, the shares have to be altered in the Plaint, otherwise, the changes effected pending suit would create further confusion in the preliminary decree. It is his further contention that the Trial Court has misconstrued the purpose and scope for the amendment and the amendment of the Plaint is necessary since it is absolutely necessary for the effective adjudication of the suit and in the event, the amendment is not allowed, it would result in multiplicity of proceedings.

6. It is also canvassed by the petitioner that the purpose of the amendment is to give a quietus to the issue and there is no need to let in further evidence, therefore, no prejudice would be caused in allowing the amendment. Reliance has been placed on the decisions reported in **2012 (5) CTC 803, 2012 (2) CTC 94, 2004 (4) CTC 231 and 2012 (5) CTC 337** to emphasize the point that all amendments which are necessary for the purpose determining the real question in controversy between the parties ought to be allowed by the

Court provided it does not change or alter the very basic nature of the suit.

7. Mr.S.Thangavel, learned counsel appearing for the 1<sup>st</sup> Respondent and Mr.R.Subramanian appearing for the 3<sup>rd</sup> respondent and also the counsel on behalf of the other respondents who have entered appearance before this Court would contend that the order passed by the Subordinate Court dismissing in I.A.No.567 of 2011 seeking amendment of the Plaint by the Revision Petitioner is perfectly justified and the Trial Court has not committed any error in dismissing the same.

8. The learned counsel supporting the cause of the respondents would submit that the Amendment Application has been filed by the Revision Petitioners with a malafide intention and is nothing but an abuse of process of law and accordingly prayed for dismissal of the present Revision Petition.

9. The short important question that arises for consideration in the present Revision Petition is with regard to the power of the Court to allow an Application for Amendment under Order VI Rule 17 of

C.P.C. The Scope of Order VI Rule 17 of C.P.C and the manner in which the Courts ought to consider Applications for Amendment is quite well settled by a long line of decisions by the Hon'ble Supreme Court and this Court.

10. In this regard, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others (2009)*** **10 SCC 84** wherein it has been held as follows:

*"63. On Critically analyzing both the English and Indian Cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment;*

*(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;*

*(2) Whether the application for amendment is bonofide or malafide;*

*(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*

*(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*

*(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

*(6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

*These are some of the important factors which may be kept in mind while dealing with application filed Under Order 6 Rule 17. These are only illustrative and not exhaustive.*

*64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the Courts must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide, worthless and/or dishonest amendments."*

11. It is undisputed that in the instant Revision Petition, the amendment in the Plaint is quite necessary for more than one reason. First, in light of the impleadment of additional Respondents, the prayer ought to be suitably amended; secondly, in light of the transposition of the 2<sup>nd</sup> plaintiff as the Defendant, there would naturally be an alteration in the shares that are prayed to be allotted to the Plaintiffs; thirdly, since the first Defendant in the Original Plaint has died, the prayer for maintenance would also have to be necessarily altered. These facts have not been considered at all in the right perspective by the Trial Court while dismissing the Application filed by the Revision Petitioners seeking Amendment.

12. It is trite proposition of law that an Amendment may be permitted to be carried out in the Plaint provided the same shall not cause any prejudice to the other parties and the same is just and necessary for effective adjudication of the suit. It is equally well settled that the Courts have to be circumspect and cautious while dealing with applications made under Order VI Rule 17 since any order that is being passed would have a direct impact in the adjudication of the suit. The Courts ought not be too technical and procedural in dealing with these issues but rather ought to be pragmatic and

cautious to ensure that injustice is not done to any party while dealing with Amendment Applications under Order VI Rule 17 of the C.P.C.

13. It should not be forgotten that the Trial Courts which are the Courts of first instance must adopt a balanced approach in dealing with the Applications and there has to be well considered reasoning behind the decision in these aspects. It has to be pointed out that in cases where the Amendment of the Plaint is necessary and the same is not allowed, it could virtually defeat the very purpose of filing the suit itself.

14. Looking at the present controversy in light of the above said discussion, it could be seen that it is not the case of either of the Respondents that there would be a prejudice caused to them in the event of the Plaint being amended. On the contrary, in the event the plaint is not amended, it is the Plaintiff who would be prejudiced apart from there being confusions that could arise paving way for multiplicity of proceedings. This Court has perused the documents filed in support of the Revision Petition and there is nothing prejudicial in I.A.No.567 of 2011 against the Respondents and for the larger interest of justice, it is necessary that the Plaint be allowed to be amended. Further, the

amendments that are sought to be carried out does not materially alter the nature of the suit.

15. Hence, this Court deems it fit to allow the present Revision Petition and accordingly the same is allowed and the Order passed by the Subordinate Court in I.A.No.567 of 2011 is hereby set aside and the Plaintiffs are permitted to amend the Plaint as prayed for in I.A.No.567 of 2011. In consequence of the said amendment, the Subordinate Court is directed to proceed ahead with the suit in accordance with law. Though the suit is the year of 2008, the Trial Court is directed to dispose of the suit within four months from the date of receipt of a copy of this order and both parties are directed to Co-operate for completing a trial and disposal. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**25.04.2016**

Index:Yes/No  
Internet:Yes/No

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To

The learned Subordinate Judge,  
Dharapuram.

**M.V.MURALIDARAN, J.**  
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**PRE-DELIVERY ORDER MADE IN  
C.R.P(PD)No.1446 of 2013**

**25.04.2016**