

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION No.3083 of 2010
and
M.P.No.1 of 2010

Kannayiram

.. Petitioner/Plaintiff

vs

1.Thalaivar,
Thoppampatti Ooratchi Mandram,
Morappur Post, Harur Taluk,
Dharmapuri District.

2.The Block Development Officer,
Morappur Post, Harur Taluk,
Dharmapuri District.

3.The District Planning Officer,
Dharmapuri District.

4.The Tahsildhar,
Harur, Dharmapuri District.

5.The District Collector,
Dharmapuri District.

6.Thangaraj

.. Respondents/Defendants

The Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.04.2010 made in I.A.No.320 of 2010 in O.S.No.47 of 2005 on the file of the District Munsif, Harur.

For Petitioner ... Mr.R.Subramanian

For Respondents ... Ms.R.Revathy for R2

... Mr.J.Bharathi Raja for R6

No Appearance ... R1, 3 to 5.

O R D E R

The Civil Revision Petition has been filed against the fair and decretal order dated 21.04.2010 passed in I.A.No.320 of 2010 in O.S.No.47 of 2005 on the file of the District Munsif, Harur.

2.The learned counsel for the revision petitioner submitted that the revision petitioner filed the suit in O.S. No.47 of 20015 on the file of the District Munsif, Harur seeking for relief of declaration, permanent injunction and mandatory injunction on the basis of the sale deed dated 11.07.1992. At the time of filing of the suit, the date of the sale deed was wrongly mentioned as 11.07.1992 instead of 11.07.1997 in the plaint. Since, there is a typographical error in the plaint, the revision petitioner filed I.A.No.320 of 2010 seeking for amendment in the plaint. The learned District Munsif, without considering the sale deed dated 11.07.1997, which was produced by the petitioner/plaintiff, has erroneously dismissed the application holding that the amendment sought for by the plaintiff cannot be accepted as it would affect the nature of the suit. Aggrieved by the said order, the present civil revision petition has been filed.

3.The learned counsel, in support of his submissions, relied on the decision of the Hon'ble Supreme Court in MOUNT MARY ENTERPRISES vs. JIVRATNA MEDI TREAT PRIVATE LIMITED (2015 [4] SCC 182), wherein, it is observed as follows in paragraphs 7 and 10.

"In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs.13,50,000/- but as the market value of the property was actually Rs.1,20,00,000/- the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.

With regard to the amendment of the plaint, the following observation has been made by this Court in North Eastern Railway Admn. Vs.Bhagwan Das:(SCCp.517, para16).

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."

4. He also relied on yet another decision of this Court, in *PALANIAMMAL vs. V.K. RAMANATHAN AND OTHERS* [2002 (1) CTC 618] wherein, it has been held as follows:

"To sum up the legal position,

(1) The power to allow amendment is wide and hence the Court should not adopt hyper technical approach but on the other hand liberal approach should the general rule particularly in cases where the other side can be compensated with costs.

(2) The general rule is that the party is not allowed to set up new case or new cause of action.

(3) Technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are allowed in the pleadings to avoid multiplicity of litigation.

(4) Courts cannot go into the truth or falsity of the proposed amendments sought for at the time of considering the application for amendment.

(5) All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.

(6) All reliefs ancillary to main relief and reliefs which are in the nature of additional

reliefs should be allowed as general rule.

(7) Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed but however, the party who is put to inconvenience should be suitably paid. The Court has to only see that the error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

(8) The delay in filing petition for amendment should be properly compensated by cost and the error or mistake, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

5. The learned counsel for the respondents submitted that the learned District Munsif has rightly dismissed the application filed by the revision petitioner since he has no right to file an application to amend the plaint after completion of evidence on the side of the plaintiff. Counter statement was also filed by the respondents. He further stated that the plaintiff is in possession of the suit property from 11.07.1992. Hence, the civil revision petition is liable to be dismissed.

6. Heard Mr.R.Subramanian, learned counsel appearing for the revision petitioner, Ms.R.Revathy learned counsel appearing for the second respondent and Mr.J.Bharathi, learned counsel appearing for the sixth respondent.

7. In RAJESH KUMAR AGGARWAL AND OTHERS Vs. K.K. MODI AND OTHERS (2006 [4] SCC - 385), it is held as follows:

" 14. Order 6 Rule 17 CPC reads thus:

"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."

This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.

15. The object of the rule is that the Court 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.

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.

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.

20. ... Therefore, the proposed amendment was sought in the interest of the beneficiaries and to sell the shares and have the proceeds invested in government bonds and/or securities. 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 malafide. 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. "

8. On perusal of the impugned order passed by the learned District Munsif, on following the decisions of the Hon'ble Apex Court in MOUNT MARY ENTERPRISES vs. JIVRATNA MEDICAL TREAT PRIVATE LIMITED (2015 [4] SCC 182) and of this Court in PALANIAMMAL vs. V.K.RAMANATHAN AND OTHERS [2002 (1) CTC 618] and on considering the submissions made by the learned counsel for all the parties, this Court is of the view that the Interlocutory Application No.320 of 2010 in O.S. No.47 of 2005, filed seeking for amendment of the date of the sale deed, does not result in changing the character or the nature of the suit and the same do not raise any fresh cause of action and only to avoid multiplicity of proceedings the said Interlocutory Application has been filed, by the petitioner/plaintiff. But, unfortunately, it has been dismissed by the learned Trial Judge.

9. In the light of the decision rendered by the Hon'ble Supreme Court as well as this Court, in the interest of justice and to avoid multiplicity of proceedings, this Court is inclined

to allow the Civil Revision Petition by passing the following the order:

- a) The impugned order passed in I.A.No.320 of 2010 in O.S.No.47 of 2005 by the learned District Munsif, Harur is set aside;
- b) Considering the request made by the learned counsel for the petitioner and as the suit is of the year 2005, the trial Court is directed to carry out the amendment in the plaint within a period of three weeks from the date of receipt of a copy of this order and dispose of the suit in O.S.No.47 of 2005 pending on the file of the District Munsif, Harur, within a period of three months thereafter;
- c) The Civil Revision Petition is allowed. There is no order as to costs. Consequently, connected M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To
The District Munsif,
Harur.

1 cc to Mr.J.Bharathiraja, Advocate, sr.24308
1 cc to M/s.R.Revathy, Advocate, sr.24133

C.R.P.No.3083 of 2010
and
M.P. No. 1 of 2010

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