

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD)No.3004 of 2012
and
M.P.No.1 of 2012

V.Krishnan Nair

..Petitioner

Vs.

1.K.Raja

2.K.Suresh

3.Tiruvannamalai Municipality

Represented by its Commissioner

..Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 17.02.2012 in I.A.No.73 of 2012 in O.S.No.197 of 2010 on the file of the learned Principal District Munsif, Thiruvannamalai.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.Saravanakumar
for Mr.R.Subramanian for R1 & R2
No appearance for R3.

ORDER

This Civil Revision Petition arises against the fair and decretal order dated 17.02.2012 in I.A.No.73 of 2012 in

O.S.No.197 of 2010 passed by the learned Principal District Munsif, Thiruvannamalai.

2. The revision petitioner/plaintiff filed a suit in O.S.No.197 of 2010 under Section 26, Order VII and Rule 1 CPC for the relief of declaration and mandatory injunction directing the defendants to remove the encroachment made by the defendants 1 and 2 by placing a bunk on the western side of the suit property, which is the entrance of the municipal land and in the event of failure on the part of the defendants to do so, to have the same removed by the third defendant and keep the suit property vacant.

3. The Lower court commenced trial and evidences have been let in by both parties in respect of the property comprised in T.S.No.219, Ward No.2, Block No.7, Thiruneelakandar street, Thiruvannamalai. At the time of arguments, the plaintiff / petitioner came to know that in the plaint schedule of the property, the Survey Number has been wrongly typed as T.S.No.219 instead of T.S. No.319 and the name of the street is also incorrectly typed as Thiruneelakandar street, instead of Thirunavukarasu street. The above said mistake is only due to typographical error. Hence, an Interlocutory Application in I.A.No.73 of 2012 was filed seeking to amend the plaint schedule.

4. The trial court came to the conclusion that since the revision petitioner has not chosen to take steps to amend the said mistake prior to the commencement of the trial, the petitioner cannot be permitted to amend the plaint. In the said order, the lower court has observed that though the respondents have admitted about the mistake in the name of the street, the petitioner has failed to convince the court with sufficient reasons for allowing the amendment application and on the ground that the same cannot be filed by way of an amendment application of this sort to fill up the lacuna. Moreover, the amendment application is a belated one, that too at the stage of commencement of trial. Therefore, the Lower Court dismissed the application in I.A.No.73 of 2012.

5. Aggrieved by the above said order, the revision petitioner has filed this Civil Revision Petition before this court. Learned counsel for the petitioner further submitted that in the event of the amendment application being allowed, the revision petitioner shall not file any application to reopen and recall the witnesses in the suit.

6. According to the learned counsel for the respondents, even though the respondents admit the said mistakes occurred in

the plaint and that there is no change of cause of action in the suit, since the revision petitioner has filed the amendment application belatedly, the said application is not maintainable either in law or on facts.

7. Heard Mr.Myilsamy, learned counsel for the petitioner and Mr.Saravanakumar for Mr.R.Subramanian for Respondents 1 and 2.

8. On considering the submissions made by the learned counsel for both the parties, this Court is of the view that the application in I.A.No.73 of 2012 in O.S.No.197 of 2010, filed seeking for amendment of the plaint, 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. The Hon'ble Supreme Court as well as this Court, have decided in identical issues seeking amendment of the pleadings for determining the real questions in controversy between the parties.

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. We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon'ble Judges of the Division Bench and as to whether the application does not appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the

Trust. It was alleged that the Respondent 1 is not only in exclusive possession of 57,942 shares of GPI and the dividend received on the said shares but has also been and is still exercising voting rights with regard to these shares and that he has used the Trust to strengthen his control over GPI. 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. The amendments sought for by the appellants have become necessary in view of the facts that the appellant being the beneficiaries of the Trust are not deriving any benefit from the creation of the Trust since 1991-92 and that if the shares are

sold and then invested in government bonds/securities the investment would yield a minimum return of 10-12%. It was alleged by the appellants that Respondent 1 is opposing the sale in view of the fact that if the said shares are sold after the suit is decreed in favor of the appellants, he will be the loser and, therefore, it is solely on account of the attitude on the part of Respondent 1 that the appellants have been constrained to seek relief against the same."

10. In ***MOUNT MARY ENTERPRISES vs. JIVRATNA MEDI TREAT PRIVATE LIMITED (2015 [4] SCC 182)***, the Hon'ble Supreme Court has 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."

11. In the case of **PALANIAMMAL vs.**

V.K.RAMANATHAN AND OTHERS [2002 (1) CTC 618], this

Court has 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."

12. On an earlier occasion, I have dealt with the similar issue in CRP(NPD)No.3083/2010 dated 18.04.2016, wherein an Amendment application filed to amend the prayer, as the date of sale deed was wrongly mentioned as 11.07.1992 instead of 11.07.1997 was allowed, after considering the decisions of the Hon'ble Supreme Court as well as this Hon'ble Court. In the light of the aforesaid decision, the dismissal order passed by the Trial Court in the amendment application is liable to be set aside.

13. The learned counsel appearing for the petitioner/plaintiff requested that a direction may be issued to the trial Court to carry out the amendment in the plaint as early as

possible and also for speedy disposal of the suit. Since the application has been filed belatedly, it is just and proper to impose a cost of compensation for the delay.

14. In the light of the decisions 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 pass the following orders:

- a) The impugned order dated 17.02.2012 passed in I.A.No.73 of 2012 in O.S.No.197 of 2010 on the file of the learned Principal District Munsif, Thiruvannamalai is set aside;
- b) The revision petitioner/plaintiff is directed to pay a cost of Rs.5000/-(Rupees Five Thousand only) to the learned counsel for the respondents 1 and 2, within two weeks from the date of receipt of a copy of this order, failing which, the order passed in I.A.No.73 of 2012 will be restored automatically.
- c) On payment of the said cost of Rs.5000/- the trial court is directed to permit the petitioner/ plaintiff to carry out the amendment in O.S.No.197 of 2010 pending on the

file of the Principal District Munsif Court, Thiruvannamalai, as early as possible.

- d) Considering the request made by the learned counsel for the petitioner and as the suit is of the year 2010, the trial Court is directed to dispose of the suit in O.S.No.197 of 2010, within a period of two months thereafter.

15. In the result, the Civil Revision Petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed. No costs.

28.04.2016

Index :Yes/No

Internet:Yes/No

Gv/ avr

To

The Principal District Munsif,
Tiruvannamalai.

D.KRISHNAKUMAR,J.

gv

CRP(PD)No.3004 of 2012

and

M.P.No.1 of 2012

28.04.2016