

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2016

(Orders reserved on 17.12.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD).No.573 of 2013
& M.P.No.1 of 2013

G.Thilagaa

.. Petitioner

Vs.

1. K.Duraisamy
2. D.Murugesan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.10.2012 in I.A.No.457 of 2012 in O.S.No.7 of 2009 on the file of the Principal District Munsif Court, Namakkal.

For petitioner : Mr.P.Mani

For respondents : Mr.T.M.Hariharan

ORDER

This Civil Revision Petition is filed against the order dated 03.10.2012 in I.A.No.457 of 2012 in O.S.No.7 of 2009 passed by the learned Principal District Munsif, Namakkal, in and by which, the application filed by the revision petitioner/plaintiff to amend the plaint, was dismissed.

2. Learned counsel for the revision petitioner/plaintiff contended that the suit is filed for mere injunction restraining the respondents/defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property as tenant, either by evicting her from the suit property by using force

except under due process of law, or by any other means. The revision petitioner/plaintiff has been dispossessed subsequent to the filing of the suit and since the plaintiff wanted to amend the plaint and substitute the relief of claiming advance amount and other amount, the amendment of plaint as prayed for ought to have been allowed by the Court below. He further contended that the trial Court erroneously dismissed the application and prayed that the Civil Revision Petition may be allowed. In support of his submissions, learned counsel for the revision petitioner/plaintiff relied on the following decisions:

(a) 2002 (2) SCC 256 (Om Prakash Gupta Vs. Ranbir B.Goyal):

"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu Vs. Motor & General Traders--* 1975 (1) SCC 770 : AIR 1975 SC 1409 this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer,J, affirmed the proposition that court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions,

and (iv) the rules of fairness to both sides should be scrupulously obeyed.

12. Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In *Trojan & Co. Vs. RM.N.N.Nagappa Chettiar*--AIR 1953 SC 235 this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In *Sri Mahant Govind Rao Vs. Sita Ram Kesho*--1898 (25) IA 195(PC), Their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted."

(b) 2004 (2) MLJ 346 (Mary Suseela Vs. Micheal):

"15. From the two judgments cited (AIR 1968 SC 1165--*Nair Service Society Vs. K.C.Alexander* and AIR 1974 SC 1178--*Shikkarchand Vs. D.J.P.Karini Sabha*) on the part of the petitioner both by the Hon'ble Apex Court are innovative and pointed to the aspect that some times it happens that the original relief claimed becomes inappropriate. In such cases, Courts may allow amendment of pleadings in the change of circumstances and at times such circumstances also curtails multiplicities of litigations and hence the Court can allow amendment as has been held in the first judgment cited above. From the second judgment cited above, this Court is able to understand that for reason of subsequent change of circumstances, the pleadings become inappropriate and whereas it is necessary to take notice of the changed circumstances and in order to do complete justice between the parties, the amendment could be allowed."

(c) 2004 (6) SCC 415 (Pankaja Vs. Yellappa):

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in

such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straightjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

(d) 2008 (4) SCC 102 (Puran Ram Vs. Bhaguram):

"19. Before parting with this judgment, we may deal with the submission of the learned counsel for the respondent that the application for amendment could not be allowed inasmuch as the same was barred by limitation. We are unable to accept this contention of the learned counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. This view was also expressed by this Court in *Pankaja Vs. Yellappa*--2004 (6) SCC 415. In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed.

20. It is well settled by a catena of decisions of this Court that allowing and rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds. In this connection reliance can be placed on a decision of this court in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply* (1969 (1) SCC 869 : AIR 1969 SC 1267). In paragraph 8 of the said decision this Court observed: (SCC p.873):

"8. Since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises; the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff, on the date on which it was originally instituted."

A reading of this observation would amply clear the position that no question of limitation shall arise when misdescription of the name of the original plaintiff or misdescription of the suit property arose in a particular case. Apart from that in the present case, although, the relief claimed before as well as after the amendment remained the same i.e. a decree for specific performance of the contract for sale, even then, in

the facts and circumstances of the present case, as noted hereinafter, we do not find why the High Court should have interfered with the discretion used by the trial court in allowing the application for amendment of the plaint."

3. Learned counsel for the respondents/defendants contended that if the amendment as sought for by the petitioner/plaintiff is allowed, the nature of the suit will change. He further submitted that the trial Court, after considering the submissions of both sides, rightly dismissed the application for amendment of plaint and prayed that the Civil Revision Petition may be dismissed.

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. Admittedly, the revision petitioner/plaintiff has filed the suit for bare injunction restraining the defendants from interfering with the possession and enjoyment of the suit property as tenant, either by evicting him from the suit property by force, except under due process of law, or by any other means. Initially, the plaintiff filed the suit only for injunction, but subsequently, the plaintiff wanted to amend the plaint by substituting the relief of recovery of advance amount and other amount, from the defendants. If the amendment is allowed, the nature of suit will entirely change and it would also alter the cause of action. Hence, such amendment cannot be allowed. The trial Court is correct in dismissing the application for amendment of the plaint.

6. The decisions relied on by the learned counsel for the petitioner, are

not applicable to the facts of the present case, since in the case on hand, the plaintiff filed the suit only for injunction and it cannot be amended as suit for recovery of money from the defendants. It is always open for the revision petitioner/plaintiff to file a separate suit for recovery of amount from the defendants.

7. Hence, the impugned order does not warrant any interference by this Court. The Civil Revision Petition is accordingly dismissed. No costs. The Miscellaneous Petition is closed.

05-01-2016

Index: Yes/no

Internet: Yes/no

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The Principal District Munsif, Namakkal.

G.CHOCKALINGAM, J

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Order

in

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