



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2016

CORAM:

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P(PD) (MD)No.1629 of 2014

M.Kajini Mohamed
represented by Power Agent,
A.Mohamed Meeran

... Petitioner/
Respondent/Defendant

Vs.

Chellammal

... Respondent/
Appellant/Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.08.2013 passed in I.A.No.675 of 2012 in O.S.No.275 of 2009 on the file of the District Munsif Court, Uthamapalayam.

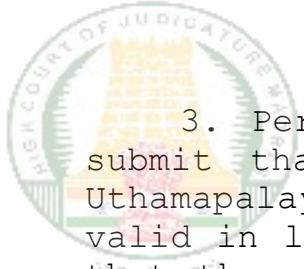
For Appellant : Mr.K.Kumaravel

For Respondent : Mr.V.George Raja
for M/s.Ajmal Associates

ORDER

This Civil Revision Petition is filed against the order dated 21.08.2013 passed in I.A.No.675 of 2012 in O.S.No.275 of 2009 on the file of the District Munsif Court, Uthamapalayam.

2. According to the learned Counsel for the revision petitioner/defendant, the respondent/plaintiff filed an application before the trial Court under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint, prayer and the schedule of properties mentioned therein, relating to the measurements of the suit properties and since the said application has been filed belatedly, the same is not maintainable in law. Moreover, the said application has been filed only on the basis of the report submitted by the Advocate Commissioner. Further, the said application seeking to amend the measurements of the suit properties, is contrary to the stand taken by the respondent/plaintiff in the pleadings of the plaint. Insofar as the amendment, regarding the prayer for declaration in paragraph 10 of the plaint, is concerned, the trial Court allowed the same. Hence, the present Civil Revision Petition is filed.



3. Per contra, the learned Counsel for the respondent would submit that the order passed by the learned District Munsif, Uthamapalayam, in allowing the amendment application is perfectly valid in law and the same is sustainable. He would further submit that the said amendment application has been filed under Order 6 Rule 17 of the Code of Civil Procedure in order to correct the measurements of the suit properties in the plaint, prayer as well as the schedule of properties and the prayer for amendment is only for determining the said suit, as it would avoid multiplicity of proceedings. Further, he would state that no prejudice would be caused to the revision petitioner/defendant by allowing the amendment application, since there would be no change in the nature or character of the suit and if the revision petitioner/defendant is having any objection, the same shall be agitated at the time of the trial and therefore, no interference is warranted by this Court as the trial Court has rightly allowed the said amendment application.

4. Heard both sides and perused the materials available on record.

5. It is an admitted fact that the respondent/plaintiff filed the suit in O.S.No.275 of 2009 on the file of the District Munsif, Uthamapalayam. In the said suit, the respondent/plaintiff filed I.A.No.675 of 2012 under Order 6 Rule 17 of the Code of Civil Procedure to amend the measurements of the suit properties in the plaint, prayer as well as the schedule of properties mentioned therein.

6. In the affidavit filed in support of the application in I.A.No.675 of 2012 in O.S.No.275 of 2009, it has been stated that the respondent/plaintiff has wrongly mentioned the measurements of the suit properties in paragraph 7 of the plaint and the respondent/plaintiff came to know the said mistake only at the time of filing of the report by the Advocate Commissioner and he has not sought for a prayer for declaration in the suit and hence, the instant application has been filed by the respondent/plaintiff for amendment of the measurements of the suit properties in the plaint, prayer as well as the schedule of properties mentioned therein. Further, the revision petitioner/defendant has not pleaded in the affidavit filed in support of this revision petition that in the event of the said amendment application is being allowed, there would be a change in the nature or character of the suit.

7. It is relevant to extract hereunder Order 6 Rule 17 of the Code of Civil Procedure:

"O.6-R.17.Amendment of pleadings.- The court may at 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."

8. This Court, in the judgment in **Pappayee v. Periyasamy (died) and others** [C.R.P(PD)(MD)Nos.1933 and 1934 of 2016, decided on 23.09.2016], held as follows:

"6.It is an admitted fact that evidence of both sides were closed on 16.11.2015 and the case was posted for arguments on 18.01.2016. Thereafter, the plaintiff filed these instant applications on 11.04.2016. Admittedly, the petitioner came to know the said fact, after the examination of P.W.2. All along, he has not taken any steps to amend the year of the death of his father at an early point of time. The contention of the learned counsel for the petitioner cannot be countenanced for the reason that the petitioner cannot fill up the lacuna by filing applications to rectify the year of the death of his father. Further, the petitioner has not produced any authenticated documents before the Court below, to prove the correct date of year of his father. Further, P.W.2 was examined during the year 2015 and these applications have filed on 11.04.2016 and therefore, the petitioner was not vigilant to file these applications in the early point of time.

7.At this juncture, it is useful to extract the ratio decidendi held in the decision in **S.Rajendran V. K.Kanniah reported in (2010) 3 MLJ 215**, which read as follows:

"When the petitioner neither pleaded nor established that he could not have moved the petition seeking amendment in spite of diligent efforts taken by him prior to the commencement of the trial, the petition seeking amendment of the plaint is liable to be dismissed."

8. Considering the above said decision along with the facts of the present case, the instant applications were filed when the case was posted for argument after completing the evidence on either side. Therefore, I am of the view that the petitioner to fill up the lacuna on the side of the petitioner/plaintiff, filed the instant applications and the petitioner was not vigilant to file these applications in the early point of time. Therefore, applying the said ratio decidendi, the trial



Court has correctly dismissed the applications filed by the petitioner, which do not warrant interference of this Court and the civil revisions petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed."

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9. In the light of the same, this Court is of the view that this Civil Revision Petition fails and the same is liable to be dismissed.

10. Accordingly, this Civil Revision Petition is dismissed, however, without prejudice to the right of the parties to agitate at the time of trial. No costs.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1 The District Munsif Court, Uthamapalayam.

2 The Record Keeper

Vernacular Section,

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Kumaravel, Advocate Sr.No.64898

+1cc to M/s.Ajmal Associates, SR.NO.64794

rsb

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