

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.25 of 2017
and
C.M.P.No.176 of 2017

1. Devanna Gounder
2. Sathiyamoorthy
3. Nachimuthu
4. Munusamy

.. Petitioners

vs

Semalai Gounder @ Semalai

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.11.2016 passed by the learned Subordinate Judge, Bhavani in I.A.No.442 of 2016 in O.S.No.79 of 2012.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.T.Murugamanickam

ORDER

The defendants are the revision petitioners, who have filed this civil revision petition, challenging the order passed by the court below in allowing the amendment application filed by the

respondent/plaintiff.

2. The brief facts are set out thus:

(i) Earlier the plaintiff filed the suit for declaration of his title and for permanent injunction in respect of the suit property. He had based his claim on the Will dated 04.02.2010. When the defendants denied the Will and also disputed the possession of the plaintiff, the amendment application has been brought out by the plaintiff to include the prayer, for delivery of possession.

(ii) The said application was resisted by the revision petitioners/defendants by contending that with respect to the properties in R.S.No.63/1A and 1B, even as on the date of the filing of the suit, the plaintiff was not in possession and the above relief was available to be included in the plaint based on the same cause of action. Having omitted to do so, filing of the amendment petition at this belated stage, cannot be permitted.

(iii) The learned Trial Judge, after thorough consideration, allowed the application on payment of costs of Rs.10,000/-. Aggrieved by the same, the present revision is filed.

3. Heard both sides.

4. The learned counsel appearing for the revision petitioners contended that after the amendment of the Code of Civil Procedure, any alteration to the pleadings should not be granted liberally, especially, in the case of amending the plaint. Particularly, when the amendment sought for is materially altering the structure of the suit and substitute the cause of action, the same shall not be entertained. Accordingly, he prayed for allowing the civil revision petition.

5. Whereas, the learned counsel for the respondent contended that the Court below after analysing the materials available on record, had allowed the amendment application, warranting no interference in this revision.

6. In the present case, originally the suit was filed for declaration and permanent injunction. The permanent injunction is only the consequential relief of declaration. According to the plaintiff, he is in possession of all the items of the suit properties, as on the date of the filing of the suit, but, after the trial, the plaintiff has come up with the new plea that he is not in possession of a portion of the

suit property in R.S.No.63/1A and 1B of Nerunjipettai Village. It is also not the case of the plaintiff that the same was subsequent to the filing of the suit wherein the Courts will be constrained to accept the amendment, which is being subsequent to the cause of action pleaded. Once the prayer for possession is not prayed, eventually, it will be barred by Order II Rule 2 of the Code of Civil Procedure, when the second suit is filed.

6. Admittedly, the claim of recovery of possession is within the time, but the only objection on the part of the defendants is that it has been filed only to fill up the lacuna and the amendment changes the very nature of the suit.

7. In this regard, the learned counsel for the revision petitioners relied on the following judgments of the Hon'ble Supreme Court:

(i) **(2012) 11 SCC 341 [Abdul Rehman and another vs. Mohd.Ruldu and others]**. The relevant portions are as follows:

"10. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The

Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The object of the rule is that Courts 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."

(ii) **(2009) 2 SCC 409 [Vidyabai and others vs. Padmalatha and another]**. Para No.10 of the said judgment reads as follows:

"7. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"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."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a

conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. "

8. Though it is pointed out by the learned counsel for the revision petitioners that after the Amendment Act 22 of 2002, the proviso has been introduced only to curb the amendment being allowed, after the trial is commenced, but when the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial, the discretion is given to the Court. Nevertheless no precise formula can be laid down regard being had to the concept of judicial discretion, yet the conscious effort for achieving the consistency should be made. There is a tendency to perceive delay as a non serious matter. The Court has to see that the parties do not resort to dilatory tactics but to seek their remedy promptly.

9. Here, the amendment is sought for only by the plaintiff, who is the suitor having filed the suit in the year 2012. The only disturbing factor is that the said amendment is filed after the trial is over and when the matter is posted for arguments.

10. As stated earlier, if the amendment is refused, it would result in foreclosing the suitor from putting forth his case. Since, it is after the trial, the suit has to be re-opened to accommodate the defendants also to file their written statement and let evidence with respect to the amendment. After considering the hardship that may be caused to the defendants, the trial court was inclined to allow the amendment sought for by the plaintiff, thereby compensating the inconvenience caused to the defendants by imposing a fine of Rs.10,000/- [Rupees ten thousand only].

11. In the light of the above facts, this Court is not inclined to interfere with the discretion exercised by the trial Court in allowing the amendment application. However, the revision petitioners/defendants are at liberty to file their written statement, if any, to the said amendment.

12. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: yes/No
Internet: yes

PUSHPA SATHYANARAYANA,J.,

vj2

To

The Subordinate Judge, Bhavani

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