

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21 .03.2017

C O R A M

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CRP.PD.No.323 of 2015 and
M.P.No.1 of 2015

Suparas Chand Jain

... Petitioner

/vs/

1. P.M.Santhakumar
2. P.M.Sivakumar
3. P.S.Sankar
4. P.S.Ram
5. Saraladevi
6. R.Anandan
7. R.Shanmugham

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the impugned order dated 28.08.2014 passed in I.A.No.1170 of 2011 in O.S.No.195 of 1997 on the file of the District Munsif Court, Thiruvotriyur.

For Petitioner ... Mr.N.R.Anantha Rama Krish

For Respondents ... Mr.N.Rajan
1, 3 to 7

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ORDER

The revision petition is filed by the 1st defendant, challenging the order allowing the petition under Order VI Rule 17 of CPC.

2. The suit is originally filed for permanent injunction, restraining the defendants/petitioners from executing any sale deed in respect of the suit properties in S.Nos.436/1, 436/1C and 436/1D morefully described in the schedule. The suit is originally filed in the year 1989 and the plaintiffs also had obtained an order of interim injunction. As per the plaint, there are 3 items shown as suit properties and all the properties belong to Murugesha Mudaliar, who is the great grandfather of the plaintiffs. He had two sons, by name, Vadivelu Mudaliar and Sivagnana Mudaliar. Vadivelu Mudaliar had four sons and Sivagnana Mudaliar died leaving his wife Jagadambal and his daughter-in-law and also a grand daughter. There was a partition suit in the family in O.S.No.78/1949 and the properties were divided among the legal heirs. The plaintiffs are the legal heirs of Sivanesa Mudaliar, Paramasiva Mudaliar and Mahadeva Mudaliar and Jagadambal. By inheritance and by bequest by Paramasiva Mudaliar, the plaintiffs became the lawful owners of the suit properties. The defendants are in Real Estate Business and they were trying to sell the suit properties by fabricating false documents. Therefore, the relief of injunction is sought for.

3. It is relevant to state that the suit was once decreed ex-parte on 09.01.2007 and the same was set aside in the year 2011. Taking advantage of the pendency of the suit, the defendants started executing the sale deed with an intention to claim equity. Therefore, the plaintiffs wanted to amend the plaint by including a prayer for recovery of possession. The said application was resisted by the defendants/petitioners on the ground of limitation. But the said application was allowed by the trial court against which the present revision is filed.

4. The contention of the revision petitioner/1st defendant is that the amendment petition has been filed after 22 years and the same was allowed, though it is clearly barred by limitation. The amendment also has taken away the right of the defendants, which is already accrued and has become final. The plaintiffs having failed to include the prayer for recovery of possession, at the time of the plaint, ought not to have been allowed to include an additional prayer taking advantage of the pendency of the suit.

5. It was further contended by the learned Counsel for the petitioner/1st defendant that the suit properties were classified as approved plots and sold, even prior to the institution of the suit and

the said relief of recovery of possession was available to the plaintiffs even on the date of filing of the suit. Having omitted to sue for the said relief, the amendment, at the belated stage, ought not to have been allowed.

6. On the contrary, the learned Counsel for the respondents/plaintiffs contended that the purpose of Order VI Rule 17 of CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right under all circumstances, but the Courts, while deciding such prayers should not adopt a hyper-technical approach.

7. The learned Counsel for the respondents/plaintiffs have placed reliance on a decision of the Hon'ble Supreme Court in **Sampath Kumar vs. Ayyakannu and another** reported in **2002 (4) CTC 189** wherein the pre-trial amendments are allowed more liberally, that too, after the commencement of the trial or after conclusion thereof. The reason being that in a pre-trial amendments, the defendants will have full-fledged opportunity to meet the case of the plaintiffs as amended. The respondents have also placed reliance on yet another decision of the Supreme Court in **Abdul Rehman and**

another Vs. Mohd. Ruldu and others reported in **2012 (5) CTC 803** in which it is relevant to extract para 8 hereunder:

"8. In **Mst.Rukhmabai v. Lala Laxminarayan and Others. AIR 1960 SC 335**, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so."

8. Reliance was also placed on a decision of the Hon'ble Supreme Court in **Surender Kumar Sharma vs. Makhan Singh** reported in **(2009) 10 Supreme Court Cases 626** following the earlier Supreme Court decision in **B.K.Narayana Pillai vs. Parameswaran Pillai and another** reported in **(2000) 1 Supreme Court Cases 712**. In the said decision, allowing of an amendment which is belated has been dealt with. It is useful to extract para Nos. 5 and 6 of the said decision hereunder:

"5. As noted herein earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned, i.e. the prayer for amendment was a belated one, we are of the

view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.

6. It is also well settled that even if the amendment prayed for is belated while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise. (See *B.K.Narayana*

Pillai v. Parameswaran Pillai). Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed."

In the light of the above decisions, the trial court had rightly allowed the application for amendment.

9. The Counsel for the respondents 1 and 3 to 7 contended that there is no cause of action shown for the newly added prayer. However, the same may be dealt with at the time of trial and argument. The amendment petition cannot be dismissed only on the ground of delay as subsequent suit on the same cause of action would be a bar under Order 2 Rule 2 of CPC. Therefore, this Court finds no infirmity in the order passed by the trial court and the same is confirmed. The defendant/petitioner is at liberty to file an additional written statement within four weeks.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

21.03.2017

Index: Yes/No
Internet: Yes
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To
The District Munsif, Thiruvotriyur.

PUSHPA SATHYANARAYANA, J.

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Judgment in
C.M.A.No.323 of 2015

21.03.2017