

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.02.2017**

CORAM

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

CRP PD Nos.942 to 945 of 2014

and

M.P.Nos.1 of 2014

(in each petitions)

K.Deepa
rep.by her General Power of Attorney
M.Shanwas .. Petitioner in all CRPs

VS

K.Shoukath Ali .. R1 in CRP No.
942 of 2014
Fathima Shameem .. R1 in CRP No.
943 of 2014
Regana Parveen .. R1 in CRP No.
944 of 2014
K.Shanawas .. R1 in CRP No.
945 of 2014

2. K.Kandasamy
3. K.Venkatesan
4. V.Parvathi .. Respondents 2 to 4
in all CRPs.

[Respondents 2 to 4 have not joined
the revision petitioner in filing the
revision and hence they are arrayed
as respondents. Hence RR2 to 4
are given up].

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 04.12.2013 passed by the learned I Additional Subordinate Judge, Salem in I.A.Nos.45, 46, 47 and 48 of 2012 in O.S.Nos.56, 58, 60 and 64 of 2005 respectively.

For Petitioner : Mr.D.Shivakumaran
in all CRPs

For Respondent 1 : Mr.S.Kaithamalai Kumaran
in all CRPs.

RR2 to 4 given up in all CRPs

COMMON ORDER

The first defendant is the revision petitioner in all these revisions.

2. The brief facts of the case would run thus:

(i) Four separate suits were filed by the first respondents/plaintiffs separately, seeking permanent injunction restraining the defendants 1 to 4 from interfering with their peaceful possession.

(ii) Earlier there was a suit filed by the first defendant/revision petitioner herein in O.S.No.528 of 2000 seeking specific performance directing the defendants therein [plaintiffs in the present suits] to receive the sale consideration and to execute the sale deed.

(iii) The suits filed in O.S.Nos.869, 871, 873 and 875 of 2000 and pending on the file of the District Munsif Court, Salem were transferred to I Additional Sub Court, Salem and re-numbered as 56, 58, 60 and 64 of 2005 respectively.

(iv) The first respondent in these revisions desired to raise certain pleas regarding the agreement referred to in the suit filed by the revision petitioner, in the present suits filed by them. Hence, they have filed the amendment petition seeking amendment of the plaint. The first respondent/plaintiffs are also seeking to introduce the plea of declaration declaring that the agreement executed in favour of the first defendant/revision petitioner is invalid in law.

(v) The said applications were vehemently opposed by the revision petitioner/first defendant on the ground that the amendment sought for by the plaintiffs would change the very nature of the suit and the cause of action.

(vi) The Court below, while allowing the said applications, had held that the amendment sought to be introduced by the plaintiffs in the suit is only with respect to the allegations/averments made by the first defendant in her written statement. It is further held that allowing of such applications would not cause any prejudice to the defendants and that it will avoid multiplicity of proceedings between the parties on the same dispute. Liberty was also granted to the defendants to file additional written statement.

3. Aggrieved by the said order, the present revisions are preferred by the first defendant.

4. It is contended by the revision petitioner that the amendment sought for by the first respondent/plaintiffs is barred by limitation. It is further contended that there is no whisper in the affidavit filed in support of the amendment applications for the delay of nearly one decade. The written statement was filed by the revision petitioner as early as in the year 2002 and that too, when the suits are in the part heard stage, the above applications have been filed.

5. In support of his contention, the learned counsel for the revision petitioner relied on the following judgments of the Hon'ble Supreme Court:

(i) **(2009)10 SCC 84 [Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Others]**. The relevant portion reads as under:

"FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

2. (2013) 9 SCC 485 [Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and others]. The relevant paragraph reads as under:

"8. Indisputably, the plaintiff-respondent no.1 was the office-bearer of the Society at the relevant time and by Resolution taken by the Society respondent No.1 was authorized to complete the transaction. Hence, it is incorrect to allege that the plaintiff-respondent No.1 was not aware about the transaction of 1989. Moreover, before the institution of the suit

in the year 2010, the plaintiffs allegedly came to know about the Conveyance Deed dated 8th February, 1989, sometime in the year 2009, but relief was not sought for in the plaint which was filed much later i.e. 14th October, 2010. The High Court has not considered these undisputed facts and passed the impugned order on the general principles of amendment as contained in Order VI Rule 17 of the Code of Civil Procedure. Hence we do not find any ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an after-thought for the obvious purpose to avert the inevitable consequence. The High Court has committed serious error of law in setting aside the order passed by the trial court whereby the amendment sought for was dismissed. The impugned order of the High Court cannot be sustained in law."

Accordingly he prayed for setting aside the order passed by the Court below.

6. Per contra, the learned counsel for the respondents/plaintiffs would submit that the core issue is only with the permissibility of the amendment applications and that the version of delay can be gone into only at the time of trial.

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

8. At this juncture, I would like to refer to 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. "

9. Though the learned counsel for the revision petitioner relied on the judgment of the Hon'ble Supreme Court reported in **(2009) 10 SCC 84 [cited supra]**, to state that the amendment should not be allowed by citing various reasons, in the very same judgment, the Hon'ble Apex Court has held as under for allowing the amendment:

"WHETHER AMENDMENT IS NECESSARY TO DECIDE REAL CONTROVERSY:

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the

amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

NO PREJUDICE OR INJUSTICE TO OTHER PARTY:

59. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."

10. Considering the aforesaid principles, the Court below has exercised its discretion and while allowing the amendment applications, it has very specifically stated that only to avoid multiplicity of proceedings on the same dispute and thereby allowed the applications. In view of the same, I do not find any

reason to interfere with the same. However, considering the fact that the suit is of the year 2005, the learned trial Judge is directed to dispose of the suits as expeditiously as possible.

11. With the above direction, all these civil revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

08.02.2017

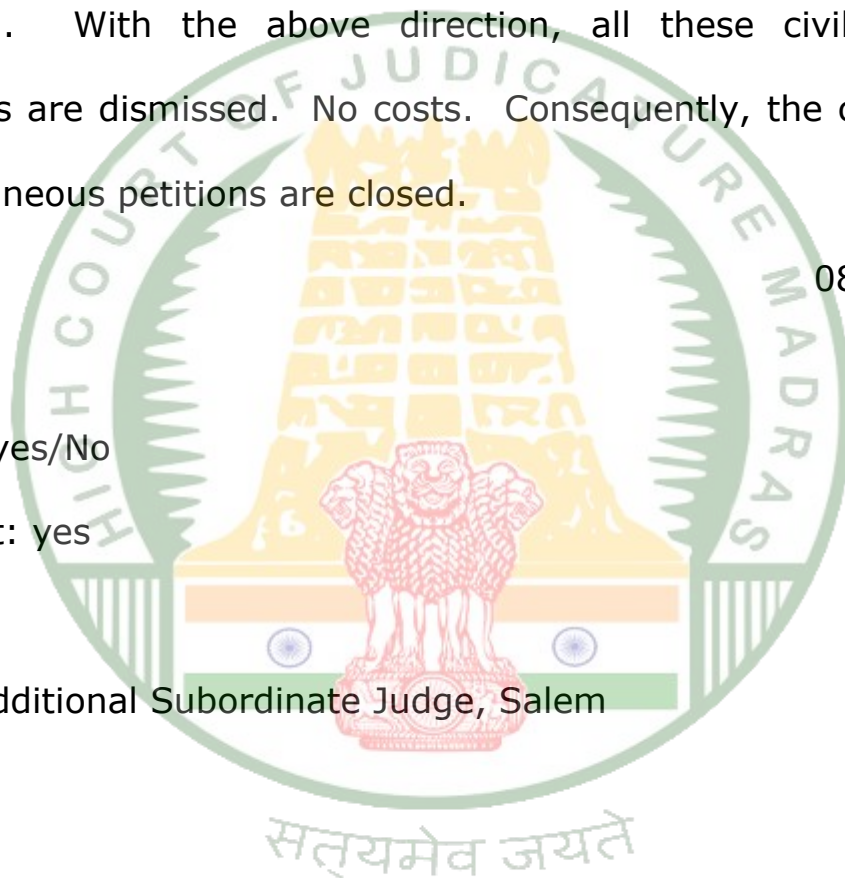
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Index: yes/No

Internet: yes

To

The I Additional Subordinate Judge, Salem



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PUSHPA SATHYANARAYANA,J.,



CRP PD Nos.942 to 945 of 2014

08.02.2017

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C.R.P.(PD) Nos.942 to 945 of 2014**PUSHPA SATHYANARAYANA.J,**

This matter came up today before this Court under the caption "for being mentioned".

2. The learned counsel appearing for the petitioner/D1 has brought to the notice of this Court that in order dated 08.02.2017, while confirming the order of the trial Court in allowing the amendment in the plaint, liberty for filing additional written statement was not granted by this Court. In paragraph 6 of the order passed by the trial Court in I.A.Nos.45, 46, 47 and 48 of 2012 in O.S.Nos.56,58,60 and 64 of 2005, the trial Court itself has specifically stated that the defendants have got every right to file the additional written statement. However, as this Court has not specifically stated the same in the said order, the petitioner/D1 wanted the liberty to the defendants to file additional written statement in view of the amendment being allowed by the trial Court.

3. Learned counsel for the first respondent/plaintiff also has got no serious objection for giving such liberty to the defendants to file the additional written statement.

4. Considering the submissions made by the learned counsel for the parties, the following sentence shall be added as last sentence in Paragraph 10 of the said order dated 08.02.2017 in C.R.P(Pd) Nos.942 to 945 of 2014.

"It is open to the defendants to file additional written statement."

5. Registry is directed to issue corrected copy of the order to the parties forthwith. In other respects, the earlier order dated 08.02.2017 shall remain unaltered.

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23.10.2017.

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PUSHPA SATHYANARAYANA.J,

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C.R.P.(PD) Nos.942 to 945 of 2014

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