

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

CORAM :

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

**C.R.P.(PD).No.2081 of 2016
and C.M.P.No.10893 of 2016**

The General Superintendent
Christian Medical College and Hospital
Ida Scudder Road,
Vellore-4,
Vellore District

... Petitioner

Vs.

1.S.Ramados
2.N.Gajapathi

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 29.04.2016 passed in I.A.No.33 of 2016 in O.S.No.21 of 2016 (previously I.A.No.677 of 2014 in O.S.No.53 of 2009) on the file of the first Additional District and Sessions Judge, Vellore.

For Petitioner : Mr.Krishna Srinivasan
for M/s.S.Ramasubramaniam and Asso

For Respondents: Mr.R.Munusamy

ORDER

The defendant is the revision petitioner herein challenging the order passed by the Court below, in allowing the amendment application filed under Order VI Rule 17 C.P.C to amend the plaint filed by the plaintiffs.

2. The suit is originally filed for permanent injunction restraining the defendants from interfering in any manner with the peaceful possession and enjoyment of the suit property. Thereafter, by virtue of an amendment application in I.A.No.366 of 2009, the boundaries were amended. The said amendment itself was pursuant to the report of the Advocate Commissioner, who was appointed in I.A.No.219 of 2009. Subsequently, another application was filed by the plaintiffs in I.A.No.150 of 2011 to include the sub division number, which was also allowed by the trial Court. Thereafter, another Advocate Commissioner was appointed in I.A.No.254 of 2013. Now, the

present application for amendment has been filed seeking to include the relief of declaration.

3. It is the case of the plaintiffs that they are the absolute owners of the suit property, having purchased the same on 24.12.2008 from one Malarvizhi and Premkumar for valid consideration. While so, the defendant, who is the petitioner herein, made an attempt on 22.01.2009 to interfere with the possession and enjoyment of the property described in the plaint schedule while they were carrying on construction in the adjoining property. Hence, the suit was originally filed for permanent injunction. As stated earlier, after filing of the report by the Advocate Commissioner in I.A.No.254 of 2013, the defendant had trespassed into the suit property and dug foundation and started construction works in the suit property. In fact, there is an order of status quo passed in I.A.No.106 of 2009. Despite, the order of status quo, the defendant has

trespassed into the suit property. Now, the defendant claim the suit property, on the basis of the false sale deed executed by one Jyothiramalingam, who had no right to sell the same. The defendant, who was never in possession of the suit property, has now encroached upon the same and put up the construction, in utter disobedience of the order of status-quo. Therefore, now the plaintiffs had sought for declaration of title over the suit property and for possession.

4. The said application was opposed by the defendant primarily contending that this is the third application after the suit was filed and the plaintiffs are filing application after application with an intention to harass the defendant.

5. It is the further case of the defendant that the plaintiffs never had title at any point of time and were never in possession of the suit property. It is stated further that if the

amendment is allowed, it will take away the pecuniary jurisdiction of the Court and the amendment filed as such is barred by limitation.

6. The trial Court, after considering the averments and arguments, allowed the application. Challenging the same, the present revision is filed.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

8. The learned counsel for the petitioner contended that the suit property was not a vacant land and even prior to the suit, there was a building and the defendant denied the title of the plaintiffs specifically even in the written statement. Despite the same, the amendment application has been filed, after three

years. It is the contention of the petitioner that the plaintiffs, who are unable to identify the suit property, are trying to gather evidence by filing an application to appoint a Commissioner, after the report is filed. To improve the case further the present application seeking amendment to the plaint has been filed, which practice has to be deprecated.

9. It is stated that the amendment is changing the cause of action and it should not be allowed. When the defendant had filed the written statement denying the title of the plaintiffs, the plaintiffs have come up with the application to amend the plaint to include the prayer for declaration of title.

10. Thus, in short, the following submissions are made by the learned counsel for the petitioner:

- I. The amendment sought for by the plaintiffs change the very basic character and nature of the suit.

II. The amendment, if allowed, will result in the prayer for a relief, which is barred by limitation.

III. The declaration of title and consequential relief of injunction in respect of the suit property is sought for, after gathering evidence, to improve their case stage by stage.

For the above said reasons, the learned counsel for the petitioner prayed for interference in the order passed by the learned trial Judge and to dismiss the application filed by the respondents/plaintiffs under Order VI Rule 17 C.P.C.

11. On the other hand, the learned counsel for the respondents vehemently opposed the submissions made by the petitioner by raising the following points:

I. The character and nature of the suit is not changed by the amendment and the prayer for declaration

was included only when the title of the plaintiffs is denied in the written statement.

II. Whether the amended prayer would be barred by limitation or not cannot be gone into in this revision petition and the same may be decided only at the time of trial.

Accordingly, the learned counsel for the respondents, prayed for the dismissal of the revision petition.

12. It is relevant to refer the judgment of the Hon'ble Supreme Court in ***(2009)10 SCC 84 [Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Others]***, wherein it is held as follows:

"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."

13. From the above principle enunciated by the Hon'ble Supreme Court, it is clear and settled that an amendment of pleading can be allowed at any stage of proceedings, provided it is necessary for the purpose of deciding the controversies

between the parties. Even if such an application is barred by time, that is a factor to be taken into consideration in exercise of the discretion as to whether the amendment should be ordered and that does not affect the power of the Court to order.

14. Insofar as the amendment does not introduce a new case and there is no serious prejudice caused to the opposite party, to do justice, the Court has got the discretionary power to allow such amendment. In the present case also, it is stated by the defendant that the plaintiffs have got no right or title to the suit property. Once there is a denial of title, the plaint should include all the reliefs that are available on the same cause of action. If granting an amendment really subserve the ultimate cause of justice and avoids further litigation, the same should be allowed. The amendment did not really introduce a new fact at all, nor did the defendant have to meet a new claim set up by the plaintiff for the first time. In my opinion the basic structure

of the suit is not altered by the propose amendment. It is only the nature of relief sought for by the plaintiff is sought to be changed. When the plaintiff is not debarred from instituting a new suit for relief of declaration and recovery of possession, on the same basic facts as are pleaded in the plaint, to avoid multiplicity of proceedings, the amendment can be allowed.

15. When there are disputed questions of facts and law, including the question of limitation, the same cannot be decided in the interlocutory stage and it has to be decided only at the time of the trial of the suit after framing necessary issue. Further, it is a settled proposition 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.

PUSHPA SATHYANARAYANA.J

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16. For the aforestated reasons, I do not find any reason to interfere with the order passed by the trial court in allowing the amendment application.

17. In the result, Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

08.02.2017

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Index: Yes / No

Internet: yes/No

To

The I Additional District and Sessions Judge,

Vellore

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