

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD) No.2389 2013

and

M.P.No.1 of 2013

A/m Selva Vinayagar Temple
rep. by its Executgive Officer, P.Kolanji
at A/m Ekambareswarar Temple
Aminjikarai, Chennai – 29.

.. Petitioner

vs

Selva Vedagiri

.. Respondent

Revision under Article 227 of the Constitution of India against the order and decretal order dated 5.4.2013 passed in I.A.No.5 of 2013 in O.S.No.5386 of 2011 by the learned XV Additional District Judge, Chennai.

For Petitioner : Mr.A.S.Kailasam

For Respondent : Mr.P.B.Balaji

WEB ORDER COPY

This Civil Revision Petition is directed against the order and decretal order dated 5.4.2013 passed in I.A.No.5 of 2013 in O.S.No.5386 of 2011 by the learned XV Additional District Judge,

Chennai.

2. The facts in a nutshell are as under: The petitioner herein filed the suit in O.S.No.5386 of 2011 seeking, inter alia, delivery of vacant possession of the suit schedule land and to direct the respondent to pay a sum of Rs.23,190/- per month towards damages for use and occupation from 1.6.2004 till handing over possession of the schedule mentioned land.

3. In the above said suit, written statement was filed by the respondent specifically denying the allegations raised in the plaint and praying for dismissal of the suit.

4. Pending suit, the petitioner filed I.A.No.5 of 2013 under Order VI Rule 17 of the Civil Procedure Code to permit the petitioner/plaintiff to amend the plaint by inserting certain paragraphs, more specifically stated in the application.

5. The respondent filed a counter affidavit in the above said interlocutory application taking a plea that the petitioner is raising a new cause of action after lapse of nearly nine years and that the suit

itself is hopelessly barred by limitation.

6. The Court below, by order dated 5.4.2013, dismissed I.A.No.5 of 2013 holding that when the written statement was filed way back in 2005 by the respondent, the petitioner has not been diligent in filing the amendment application at the earlier point of time.

7. In such backdrop, the present civil revision petition is filed by the unsuccessful applicant/plaintiff.

8. I heard Mr.A.S.Kailasam, learned counsel for the petitioner and Mr.P.B.Balaji, learned counsel for the respondent and perused the entire materials available on record.

9. It is the contention of the learned counsel appearing on behalf of the petitioner that the proof affidavit of the respondent has been filed only in September, 2012 and, therefore, there was necessity to file an application seeking amendment and in any event, such amendment as prayed for would not prejudice the respondent and the said aspect was not considered by the Court below.

10. It is further contended that the property involved is that of an idol and the Court exercising parens patriae jurisdiction ought to have allowed in the interlocutory application seeking amendment. He further added that new cause of action is not being introduced by way of the amendment, and such amendment sought is only an answer to the defence taken by the respondent.

11. The point that arises for consideration is whether the trial Court was right in dismissing the petition seeking amendment of plaint.

12. In *Pankaja v. Yellappa*, reported in (2004) 6 SCC 415, the Hon'ble Supreme Court held as follows:

"12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application."

13. It is well settled that Order VI, Rule 17 of the Code of Civil Procedure confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on

such terms as may be just. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case, generally, it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended, in the latter cases, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straight-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

14. In this case, the suit is in part-heard stage. Therefore, in the facts and circumstances of the case, no prejudice would be caused, if the proposed amendment is allowed.

15. Though the amendment petition has been filed belatedly, having regard to the nature of the suit, the trial Court ought to have allowed the petition for amendment of the plaint. Further, I find that the proposed amendment would not alter the character of the suit in any way.

16. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleading to avoid uncalled for multiplicity of litigation. All amendments that are necessary to decide the controversies between the parties are to be allowed in the interest of justice.

17. As regards allowing amendments in pleadings to avoid multiplicity litigation so as to ensure that justice is done, the following paragraph from the judgment of the Apex Court in *State of M.P. v. Union of India* (2011) 12 SCC 26 can be referred to:

"8. The purpose and object of Order 6 Rule 17 of the Code 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 and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in case where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations."

(emphasis supplied)

18. In the case on hand, only in the written statement filed by the respondent, it is stated that the question relating to the title of the suit schedule land has been raised and the proof affidavit of the

respondent was filed only in September, 2012. Therefore, in my considered view, the question of limitation can also be raised by the respondent/defendant at the time of deciding the suit.

19. For the foregoing reasons, the revision is allowed and the order dated 5.4.2013 passed in I.A.No.5 of 2013 in O.S.No.5386 of 2011 is set aside. The issue of limitation to file the amendment application raised by the respondent/defendant can be decided along with the suit and as such, liberty is granted to the respondent/defendant to raise the said question at the appropriate time. The trial Court is directed to carry out the amendment as prayed for by the petitioner/plaintiff and dispose of the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2017

vs

Note: Issue order copy on 08.01.2019

Index : Yes

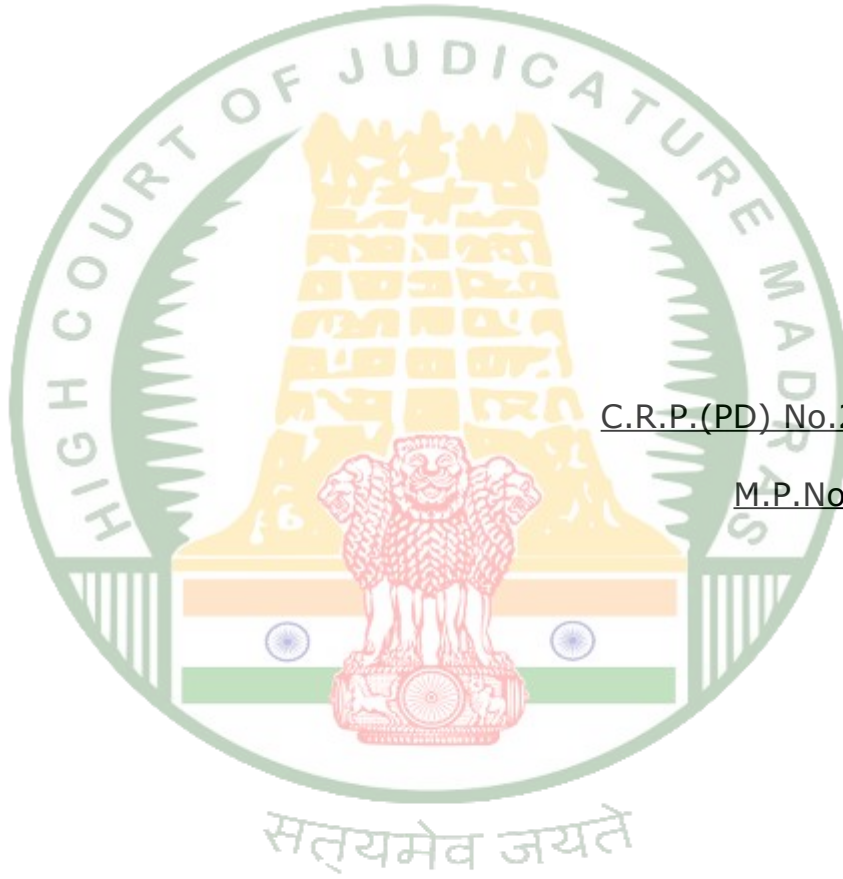
To

The XV Additional District Judge
Chennai.

WEB COPY

M.V.MURALIDARAN, J.

VS



C.R.P.(PD) No.2389 2013
and
M.P.No.1 of 2013

WEB COPY

14.02.2017