

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3629 of 2013
and
M.P.No.1 of 2013**

N.Balu

.. Petitioner

Vs.

1.P.Gopalakrishnan
2.P.Manikandan
3.P.Muthukomaran
4.P.Saroja
5.P.Govindaraj
6.P.Arumugham

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order of the learned Additional District Munsif, Cuddalore, passed in I.A.No.949 of 2011 in O.S.No.436 of 2006 dated 19.03.2013.

For Petitioner : Mr.J.Antony Jesus

For Respondents : No Appearance

ORDER

The unsuccessful plaintiff in the amendment application is the revision petitioner in this Civil Revision Petition.

2. According to the revision petitioner/Plaintiff, he filed a suit against the respondents herein in O.S.No.436 of 2006 before the Additional District Munsif, Cuddalore for Permanent injunction. Pending suit, the plaintiff had the benefit of interim injunction and it was also periodically extended. The respondents herein taking advantage of the same, unlawfully trespassed into the suit property 6 months back and they have also put up a thatched house in the suit property. The police complaint given by the revision petitioner not yielded any positive result. Hence, the revision petitioner/Plaintiff filed I.A.No.949 of 2011 to amend the prayer seeking to include the relief of declaration and recovery of possession. The said application was resisted by the respondents herein by filing counter affidavit to the amendment application.

3. The learned Trial Judge dismissed the amendment application by order and decree dated 19.03.2013. Aggrieved over the same, the petitioner herein come up with this civil revision petition.

4.I heard Mr.J.Antony Jesus, learned counsel appearing for the petitioner and there was no representation for the respondents and perused the available materials on records.

5.It is seen from the records that the plaintiff has purchased the suit property on 26.12.05 from the sons and wife of Perumal, who are the defendants in the suit. whereas, the defendants/respondents herein contended that the plaintiff is a money lender and the defendants borrowed money from him and for that they only executed mortgage deed, but the plaintiff cunningly obtained sale deed, instead of getting mortgage deed.

6.According to the plaintiff after executing sale deed, the defendants attempted to disturb the possession of the plaintiff, hence he filed a suit for Permanent Injunction and interim injunction was also granted in favour of the plaintiff. But it was not extended for certain period. The respondents herein by taking advantage of the non-extension of the interim order, trespassed into the suit property and put up thatched house. Therefore, the plaintiff sought to amend the plaint by including the relief of declaration and recovery of possession by filling amendment petition in I.A.No.949 of 2011 and the same was dismissed by the trial court by order dated 19.03.2013

by holding that the plaintiff failed to mention exact date on which the defendants trespassed into the suit property and on what date the plaintiff made a police complaint. The failure to mention the above said particulars in the amendment application disentitled the plaintiff to amend the prayer in the plaint.

7.This Court has perused the affidavit filed in support of the amendment application by the revision petitioner. It is true that the particulars regarding the date on which the defendants illegally trespassed into the suit property and the date on which the plaintiff lodged police complaint for the trespass are lacking. But for the lack of particulars, the relief sought for in the amendment application shall not be thrown out.

8.In my considered opinion, by allowing the amendment application by including the relief of declaration and recovery of possession, it does not mean that the suit is decreed as prayed for. The plaintiff/ revision petitioner will have to establish his case before the trial court by adducing oral and documentary evidence in support of his case. While allowing the amendment application the merit of the suit is not going to be decided. Further, after allowing amendment application, the defendants are entitled to file additional

written statement by denying averments made by the plaintiff. Further, the proposed amendment is a pre-trial amendment and the same could be decided liberally. By allowing the same multiplicity of proceeding could be avoided and the parties need not spend their time and money for litigation. By allowing the proposed amendment no prejudice will be caused to the respondent herein.

9. At this juncture, it is useful to refer the judgment of this Court reported in **2016 (4) CTC 163**, wherein this court considered the Judgment of the Hon'ble Apex Court reported in **2006 (4) SCC 385** wherein in paragraph 20 it reads as follows:

“A reading of the entire the plaint and the prayer made there under and the proposed amendment would go to show that there was no question of any inconsistency with the case originally mad out in the plaint. The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. There is a plethora of precedents pertaining to the grant of refusal of permission of amendment of pleadings. The various decisions rendered by this court and the proposition laid down therein are widely known. This court has consistently held that the amendment to the pleading should be liberally allowed, since procedural obstacles ought not to impede the dispensation of justice”

10.I have also held in a case in ***R.A.Karunambal and Another v. Loganathan and others*** reported in ***(2016) 4 MLJ 320***:

“6.It is also canvassed by the petitioner that the purpose of the amendment is to give a quietus to the issue and there is no need to let in further evidence, therefore, no prejudice would be caused in allowing the amendment. Reliance has been placed on the decisions reported in ***2012 (5) CTC 803, 2012 (2) CTC 94, 2004 (4) CTC 231 and 2012 (5) CTC 337*** to emphasize the point that all amendments which are necessary for the purpose determining the real question in controversy between the parties ought to be allowed by the Court provided it does not change or alter the very basic nature of the suit.

9.The short important question that arises for consideration in the present Revision Petition is with regard to the power of the Court to allow an Application for Amendment under Order VI Rule 17 of C.P.C. The Scope of Order VI Rule 17 of C.P.C and the manner in which the Courts ought to consider Applications for Amendment is quite well settled by a long line of decisions by the Hon'ble Supreme Court and this Court.

10. In this regard, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others*** AIR 2009 SC 2897 : (2009) 10 SCC 84 : LNIND 2009 SC 1898 : (2009) 8 MLJ 907 wherein it has been held as follows:

"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 bonofide or malafide;

(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.

64. The decision on an application made under Order 6 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 bonafide, legitimate, honest and necessary amendments and should never permit malafide, worthless and/or dishonest amendments."

13. It should not be forgotten that the Trial Courts which are the Courts of first instance must adopt a balanced approach in dealing with the Applications and there has to be well considered reasoning behind the decision in these aspects. It has to be pointed out that in cases where the

Amendment of the Plaint is necessary and the same is not allowed, it could virtually defeat the very purpose of filing the suit itself.

14.Looking at the present controversy in light of the above said discussion, it could be seen that it is not the case of either of the Respondents that there would be a prejudice caused to them in the event of the Plaint being amended. On the contrary, in the event the plaint is not amended, it is the Plaintiff who would be prejudiced apart from there being confusions that could arise paving way for multiplicity of proceedings. This Court has perused the documents filed in support of the Revision Petition and there is nothing prejudicial in I.A.No.567 of 2011 against the Respondents and for the larger interest of justice, it is necessary that the Plaint be allowed to be amended. Further, the amendments that are sought to be carried out does not materially alter the nature of the suit.”

11.In view of the foregoing reason, I am of the considered opinion that the proposed amendment application filed in I.A.No. 949/11 by the plaintiff is to be allowed.

12.In the result:

(a) this Civil Revision Petition is allowed and order and decree made in I.A.No.949 of 2011 in O.S.No.436 of 2006 dated 19.03.2013 on the file of the Additional District Munsif, Cuddalore is hereby set aside;

(b) the trial court is directed to permit the revision petitioner to carry out the amendment and file amended plaint;

(c) the defendant is permitted to file an additional written statement if any, within 30 days from the date of filing of the amended plaint.

(d) thereafter, the trial court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

02.02.2017

Note:Issue order copy on 17.04.2017
Internet:Yes

Index:Yes

vs

To

The Additional District Munsif,
Cuddalore.

M.V.MURALIDARAN, J.

VS

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