



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (MD) (NPD) Nos.2173, 2174 and 2175 of 2015

and

C.M.P (MD) Nos.1, 1 and 1 of 2015

1.Kulanthaivel
2.K.Krishnan
3.Lakshmi
4.R.Rani
5.M.Amudha
6.P.Senthilkumar

.. Petitioners in all CRPs

Vs.

1.M.Baskaran
2.S.Siddan

.. Respondents in all CRPs

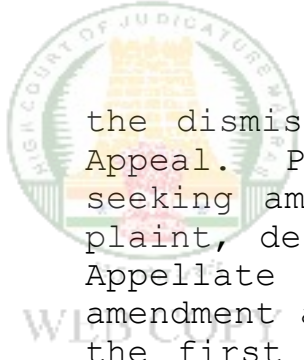
Prayer: These Three Civil Revision Petitions are filed Under Section 115 of CPC to call for the records of fair and decreetal order dated 28.04.2015 passed in I.A.Nos.83, 84 and 85 of 2013 in A.S.No.108 of 2008 on the file of the Learned Additional Sub-Court, Dindigul and set aside the same thereby allow the amendment sought in I.A.Nos.83, 84 and 85 of 2013.

For Petitioners
in all CRPs : Mr.I.Suthakaran

For Respondents
in all CRPs : Mr.A.Hariharan

COMMON O R D E R

These three Revision Petitions are directed against the dismissal of the I.A.Nos.83,84 and 85 of 2013, filed in A.S.No.108 of 2008 dated 28.04.2015, on the file of the learned Additional Sub-Court, Dindigul, by the plaintiff/appellant to amend the suit schedule property.



the dismissal of the suit, the plaintiff has preferred the First Appeal. Pending appeal, these three applications have been filed seeking amendment of the suit schedule property as found in the plaint, decree and grounds of the appeal respectively. The First Appellate Court has dismissed the applications holding that the amendment applications have been filed after Five Years following the first appeal, which indicates the intention of the appellant as to protract the proceedings.

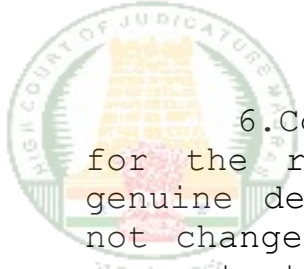
3.The learned counsel for the revision petitioner submitted that the Appellate Court failed to appreciate the true intent of the revision petitioner in seeking amendment to the schedule of the property. The learned Sub Judge failed to note that the amendment sought to be made by the petitioner will neither change the cause of action of the suit property nor give new cause of action. The first Appellate Court being the last Court of fact, the rejection of amendment petition will affect the right of the party.

4.In support of his submission, the learned counsel for the revision petitioner relied on the judgement of this Court rendered in **S.Kanthimathiammal and others vs Nagammal and others** reported in **2015-4-L.W.233** wherein this court has viewed that,

It is a well settled law that proviso cannot whittle down the main provision of the statute. The proviso shall always be interpreted narrowly and the very purpose of the main proviso. Therefore, the application of proviso will be interpreted narrowly. At this juncture, it is also relevant to refer the main provision, Order 6 Rule 17 which provides for amendment of the pleadings at any stage of the proceedings. Therefore, if it requires any amendment of proceedings, the same can be permitted at any stage of the proceedings in the interest of justice. Furthermore, Section 153 of the Civil Procedure Code also provides for amendment of the pleadings at any stage of the proceedings.

and on the facts in the above case, the Court has held that amendment will not change the basis of the suit and permitted the plaintiff to amend at the appellate stage.

5.Similarly, in **Thamaraiselvi vs latha and others** reported in (2013) 2 MLJ 328, this Court has allowed the plaintiff to carry out the amendment to include certain properties, which were omitted to be included in the original plaint. Since the Court felt that in the plea, the property which has been omitted has already been included but without relief or prayer in respect of that property in the suit schedule.



6. Considering the judgements cited by the learned counsel for the revision petitioner, it is clear that if there is a genuine delay to carry out amendment to the pleading which will not change the cause of action or introduce new facts, the Court can entertain such applications for amendment at any stage even, during the appellate stage. Contrarily, if the amendment will alter the cause of action or will introduce new cause of action, then such request cannot be entertained.

7. In the case in hand, the schedule of property as found in the plaint, and the decree and in the memorandum of appeal compared by this Court with the schedule of property sought to be amended. At the outset this Court was able to find out that in the original plaint, the properties are described with Survey Number and measurements. whereas, by way of amendment the plaintiff wants to delete the Survey Number. This by itself makes the description of the property more ambiguous and difficult to identify. Further, the first item of original schedule has been described as three different items.

8. The intent of the plaintiff is very clear. By amending the plaint he wants exclusive rights and claim over the well, and the pathway in the suit property, the relief which he neither pleaded nor mentioned in the original plaint. If the amendment sought is allowed, definitely a new cause of action with new facts are likely to be introduced. Introduction of new cause of action and new facts cannot be entertained by way of amendment that too at the appellate stage.

9. The judgement cited above does not contemplate or facilitate amendment to the pleadings leading to ambiguous description of property or addition relief based on new cause of action or facts. Only an accidental omission in the pleading or description of the property, which has crept due to inadvertance of the parties can be redressed by invoking Order 6 Rule 17 of CPC at the appellate stage. This is not a case fit to invoke Order 6 Rule 17 of CPC. As pointed out earlier this will change the entire cause of action and the defendant, will be highly prejudice.

10. Therefore, the order of the Trial Court upheld. All the three Civil Revision Petitions are dismissed as no merit in the revision petitions. Consequently, connected miscellaneous petitions are also closed. No costs.

Sd/-

Assistant Registrar (C)

/True Copy/



To

The Additional Subordinate Judge,
The Additional Sub-Court,
Dindigul.

+ 1 CC TO Mr.A.HARIHARAN, ADVOCATE IN SR No. 51590
+ 1 CC TO Mr.I.SUTHAKARAN, ADVOCATE IN SR No. 51410

GK/MM

TE/SV : 05/05/2017 : 4P/4C

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