

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (PD) No.4393 of 2017
and
C.M.P.No.20903 of 2017

C.R.Sivanandham (deceased)

1.S.Samudeeswari
2.C.S.Sendil Kumar
3.C.S.Rathinavelu
4.Pushpanjali
5.Nandhini

... Petitioners

..Vs..

V.K.Ramprasad

D.Venugopal (Deceased)

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decreetal order passed in I.A.No.14063 of 2017 in O.S.No.6923 of 1996 dated 13.11.2017 on the file of learned VIII Assistant Judge, City Civil Court, Chennai and praying to set aside the same and allow the petition.

For petitioners : Dr.C.Ravichandran
For Respondent :Mr.N.Premkumar

ORDER

Challenging the fair and decretal order in I.A.No.14063 of 2017 in O.S.No.6923 of 1996, dated 13.11.2017 on the file of learned VIII Assistant Judge, City Civil Court, Chennai, the present Revision Petition has been filed.

2. The petitioner has filed in C.S.No.1152 of 1990 before this Court and the same has been transferred and re-numbered as O.S.No.6923 of 1996, on the file of VIII Assistant Judge, City Civil Court, Chennai. In the aforesaid suit, the petitioner has filed I.A.No.14063 of 2017 under Order VI Rule 17 read with 151 C.P.C to amend the schedule of property in the plaint by stating that the subject matter of the suit schedule property in Plot No.I Ramasamy Nagar, No.110, Saligramam, Chennai-93 comprised in layout plan LPDM/DDTP No.165/73 and situate in S.Nos.136/3 and 137/2 of No.11, Saligramam Village, Saidapet Taluk, Chingleput District for an extent of 1 ground 1,547 sq.ft and morefully described in the aforesaid said application. In the plaint, it has been wrongly mentioned as plot No.IV and also there is a mistake on the boundaries as mentioned in the suit property and therefore, filed the present application.

3. The learned counsel for the petitioner has submitted that due to typographical error description of the suit property has been wrongly stated in the plaint. Hence, schedule of the plaint in the aforesaid suit has to be amended as follows:-

"All that property vacant land in Plot No.4, Ramaswamy Nagar, Saligramam, Madras - 93, comprised in Survey No.137/2, in No.110, Saligramam Village, Saidapet Taluk, Chengalpet District in the sanctioned layout plan LPDM/DDTP No.165/73 bounded on the North by Kavary Rangan Nagar, South by 30 feet Vellore Ramaswamy Naidu Street, East by:Plot No.5, and West by:Plot No.3 of an extent of 1 Ground and 1150sq.ft., or thereabouts in the Registration Sub-District of Virugambakkam and Registration District of Madras South".

4. Further, the learned counsel for the petitioner would submit that the aforesaid suit has been filed prior to the amendment Proviso added to Order VI Rule 17 of C.P.C. The petitioner also relying upon the decision of this Court reported in AIR 2007 Madras 78 Full Bench (M/s.Hi Sheet Industries V.Litelon Limited and Ors), wherein it is held as follows:-

"Specific Relief Act (47 of 1963),S.40(2)-Civil P.C (5 of 1908),O.6, R.17 Proviso (as inserted w.e.f 1.7.2002 by Act 22 of 2002) - Limitation Act (36 of 1963),S.3 - Suit for injunction and amendment of plaint to specify claim for damages in lieu of injunction and bar of limitation and does not apply as a rule and such amendments are mandatory and are permissible even after commencement of trial".

ii) **In Jayamani and another Vs. District Collector, Coimbatore District, Coimbatore and others (2007 (3) MLJ 897)** is held as follows:-

17. Further, while dealing with the effect of the amended provision of the Code of Civil Procedure in respect of Order 6 Rule 17 by inserting the proviso, which came into force as I have stated earlier on 1.7.2002, a Full Bench of this Court in the judgment rendered in Hi.Sheet Industries, a partnership firm, carrying on business at 61-D,D.V.Road, Ambur Town, Vellore District V. Litelon Limited, having its Office at No.68, Sipcot Industrial Complex, Hosur, Rep.by its Managing Partner (2007) 1 MLJ 320:(2006) 5 CTC 609 by relying upon the earlier decisions rendered in Rathinam @ Samuthiram Ammal V.Syed Abdul Rahim (2005) 3 MLJ 94:(2005) 3 CTC 321 and Radhakrishnan V. Pattu Ammal (2006) 5 CTC 396, has held in categoric terms that the proviso to Order 6 Rule 7 of the Code of Civil Procedure is not applicable, in respect of the suits/pleadings instituted before the commencement of the amended code. The relevant passage of the Hon'ble Full Bench is as follows:-

"11.19.In the instant case, the suit is instituted in October, 1990. The amendments came into force with effect from 1.7.2002. Therefore, the proviso Rule 17 of Order 6, C.P.C.is not applicable in the instant case, however, we clarify that those amendments under Act 22 of 2002 are applicable to the pleadings instituted with effect from 1.7.2002".

18. Applying the said decision in the present cases the suits in O.S.No.253 of 2000 and O.S.No.245 of 2000 having been instituted in the year 2000, the amended Code of Civil Procedure in respect of Order 6 Rule 17, especially relating to provision, has no application to the facts and circumstances of the case. Consequently, the decision arrived by the learned Trial Judge in dismissing the applicants filed for amendment on the ground that after commencement of the Trial, the same is filed, is not maintainable and is liable to be set aside as unsustainable. Even on the merits of the case, as I have narrated above, the learned Judge has passed the order rejecting the petition without proper application of mind. Even if the amended Code of Civil Procedure is to be applied, the proviso to Order 6 Rule 17 imposes an obligation on the Trial Court to give finding as to the reason for the petitioners in not filing the amendment petition, even after the written statement is filed informing about the cancellation of natham patta, especially when it is admitted that such xerox copy of such order was produced for the first time only when the D.W.1 was examined in September, 2003".

iii) In ***Manickam Vs. Vadivambal and others (2016(1) MWN (Civil)***

410, this Court held as follows:-

17. As aforesaid, this Suit was filed prior to the commencement of Code of Civil Procedure (Amendment) Act, 2002. Mr.Nicholas, has therefore submitted that, as

rightly held by a learned Single Judge of this Court in Rathnam @ Anna Samuthiram Ammal and others, since the Plaint of the present suit was filed in the 1991 i.e., prior to the commencement of the Code of Civil Procedure (Amendment) Act 2002, which came into effect from 1.7.2002, the Proviso of Rule 17, of Order 6 of C.P.C ., was not made applicable to the present case and therefore the question of long delay would not be an impediment in granting the order in favour of the respondents/plaintiffs to amend the plaint".

6. The learned counsel for the respondent has relied upon the decision from the Full Bench of this Court reported in **(2012)3 MLJ 159 (SC)** **(J.Samuel and others Vs.Gattu Mahesh and others)** in para No.16 is as follows:-

"The claim of typographical error/mistake is baseless cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial Court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip. Though the counsel for

the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order 6 Rule 17 with proviso on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order 6 Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications.

ii) Further, ***in Vidyabai and others Vs.Padmalaatha and another*** ***(2009) 2 SCC 409*** in para Nos.18 and 19 as follows:-

18. Reliance has also been placed by Ms Suri on Rajesh Kumar Aggarwal V.K.K.Modi. No doubt, as has been held by this Court therein that the Court should allow amendments that would be necessary to determine the real question of the controversy between the parties but the same indisputably would be subject to the condition that no prejudice is caused to the other side".

19. It is the primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the Court. It

puts an embargo on exercise of its jurisdiction. The Court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint".

7. The learned counsel further relied on another decision of the Hon'ble Supreme Court in RAJESH KUMAR AGGARWAL AND OTHERS vs. K.K.MODI AND OTHERS (2006 [4] SCC -385), wherein, it is held as follows:-

14. Order 6 Rule 17 CPC reads thus:

"17.Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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".

8. The facts on the present hand, the amendment to provision under Order 7 Rule 6, under Act 22/2002 are coming into force from 1.7.2002. The suit filed by the petitioner in the year 1990. Hence, the application instituted by the

petitioner is not attracted under the amended provision. Therefore, the decision relied by the petitioner are applicable to the facts of the case. Hence, on facts of the above case and decision cited supra, the order passed by the Court below is liable to be set aside.

9. Accordingly, the order in I.A.No.14063 of 2017 in O.S.No.6923 of 1996 dated 13.11.2017 is set aside on condition that the petitioner has to pay the cost of Rs.25,000/- to the respondent in person or through his counsel within four weeks from the date of receipt of a copy of this order.

10. In fine, this Civil Revision Petition is allowed with the above terms. No costs. Consequently, connected Miscellaneous Petition is closed. Post for compliance after four weeks.

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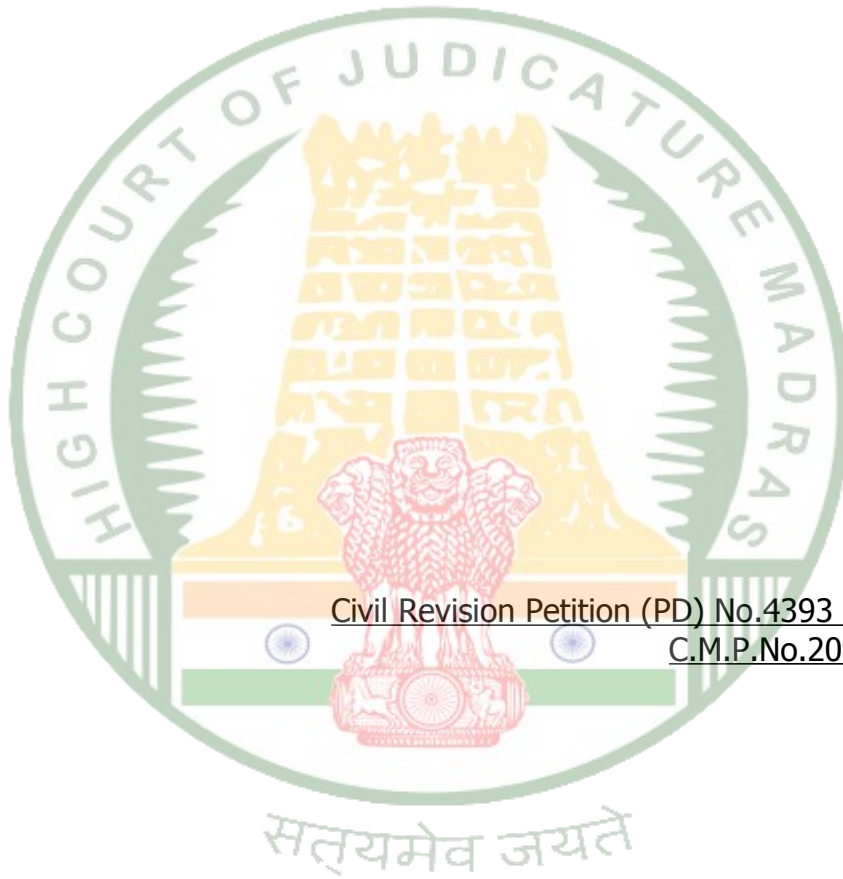
To

The VIII Assistant Judge, City Civil Court, Chennai

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D.KRISHNAKUMAR, J.,

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