

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.766 of 2018

and

CMP.No.3920 of 2018

D.Selvam

.. Petitioner

Vs

1.Arulmigu Karaneeshwarar Thirukkoil,
Represented by its Executive Officer,
Having Office at the Temple Premises,
Saidapet, Chennai-15

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Park Town, Chennai-3

.. Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the
Constitution of India against the order and decreetal order passed by the
Hon'ble VIII Assistant Judge, City Civil Court, Chennai dated 17.11.2017
in IA.No.9009 of 2017 in OS.No.1390 of 2017.

For Petitioner : Mr.S.Natana Rajan

ORDER

The Civil Revision Petition is taken up for final disposal at the admission stage itself.

2. According to the revision petitioner, the first respondent has filed a suit in OS.No.1390 of 2017 on the file of the VIII Assistant City Civil Court, Chennai for permanent injunction and mandatory injunction against the revision petitioner and the second respondent herein . In the aforesaid suit, the first respondent has filed an application in IA.No.3960 of 2017 for interim injunction and another application in IA.No.9009 of 2017 to amend the plaint in the aforesaid suit by stating that the street No. has wrongly been mentioned in the plaint. The said application was allowed by the court below. Challenging the said order, the revision petitioner has preferred the present Civil Revision Petition before this Court.

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3. The learned counsel for the revision petitioner would submit that the court below did not consider the objection raised by the revision petitioner. The revision petitioner has particularly disputed the

relationship of landlord and tenant in the petition premises. The court below has allowed the said application by stating that the same can be decided at the time of trial. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

4. Heard the learned counsel for the revision petitioner and perused the materials available on record.

5. On perusal of the records, the first respondent has filed the instant application in IA.No.9009 of 2017 for amendment of plaint stating that the street No. has wrongly been mentioned in the aforesaid plaint. In the light of the decision of this Court in the case of **RAJESH KUMAR AGGARWAL AND OTHERS Vs. K.K. MODI AND OTHERS (2006 [4] SCC – 385)**, 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."

This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.

15. The object of the rule is that the Court should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to

the parties before the Court.

20. We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon'ble Judges of the Division Bench and as to whether the application does not appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the Trust. It was alleged that the Respondent 1 is not only in exclusive possession of 57,942 shares of GPI and the dividend received on the said shares but has also been and is still exercising voting rights with regard to these shares and that he has used the Trust to strengthen his control over GPI. Therefore, the proposed amendment was sought in the interest of the beneficiaries and to sell the shares and have the proceeds invested in government bonds and/or securities. A reading of the entire plaint and the prayer made thereunder and the proposed amendment would go to show that there was no question of any inconsistency with the case originally made 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 malafide. There is a plethora of precedents pertaining to the

grant or refusal of permission for 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 pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The amendments sought for by the appellants have become necessary in view of the facts that the appellant being the beneficiaries of the Trust are not deriving any benefit from the creation of the Trust since 1991-92 and that if the shares are sold and then invested in government bonds/securities the investment would yield a minimum return of 10-12%. It was alleged by the appellants that Respondent 1 is opposing the sale in view of the fact that if the said shares are sold after the suit is decreed in favor of the appellants, he will be the loser and, therefore, it is solely on account of the attitude on the part of Respondent 1 that the appellants have been constrained to seek relief against the same."

6. This Court has also considered the amendment application wherein Survey No. and Street No. was wrongly typed in the plaint, in a Civil Revision Petition in CRP(PD)No.3004 of 2012 and allowed the amendment application by considering the decision of the Hon'ble Supreme Court. On the present case on hand, it is the pre-trial stage,

therefore, the court below has rightly allowed the application. Hence, there is no error or illegality in the order passed by the Court below.

7. In the light of the facts of the case and the decisions cited supra, the order passed by the court below is confirmed. However, it is made clear that the observation made in the above application could not be influenced by the Court below and the same shall be considered independently, at the time of trial in the suit.

8. The Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

05.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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To

The Hon'ble VIII Assistant Judge,
City Civil Court,
Chennai



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D. KRISHNAKUMAR J.,

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