

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD).No.1617 of 2016
and
CMP.No.8762 of 2016

1.Sivakumar
2.Umapathy
3.Kolaki
4.Subramani
5.Suguna

... Petitioners

Vs.

Durai Srinivasan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decreetal order in I.A.No.650 of 2015 in O.S.No.42 of 2009 dated 03.03.2016 on the file of the District Munsif Court, Arakkonam.

For Petitioners : Ms.A.Sumathy

For Respondent : Mr.G.Jermiah

* * * * *

ORDER

This Civil Revision Petition has been filed against the fair order and decretal order in I.A.No.650 of 2015 in O.S.No.42 of 2009 dated 03.03.2016 on the file of the District Munsif Court, Arakkonam.

2.The plaintiff/respondent has filed a suit in O.S.No.42 of 2009 for declaration against the defendants/petitioners in the aforesaid suit. The petitioners/respondents has filed the written statement by stating that the suit properties in SR.No.1024/6 measuring to an extent of about 1 acre and 5 cents stands in the name of Subramani and SR.No.1024/1 to an extent of 2 acres and 47 cents stands in the name of Anniyappan, the third defendant. Now the petitioners/respondents have filed the instant application to correct the SR.No.1024/6 which is wrongly mentioned in the written statement. The aforesaid mistake is only a typographical error. As per the patta Revenue record, the actual measurement in the SR.No.1025/6 is an extent of 2 acres and 48 cents, due to the clerical mistake. The aforesaid mistake is committed by the petitioners. Therefore, the trial Court has dismissed the application by stating that at the time of the trial so commenced, the plaintiff side evidence was concluded. The instant application has been filed belatedly.

3.According to the learned counsel for the petitioners, the Court below without considering the typographical mistakes committed by

the petitioners at the time of filing of the written statement, has erroneously dismissed the application. Therefore, no prejudice would be caused to the respondent, if the aforesaid application is allowed, it is left open to the respondent, if necessary to examine the petitioners in the trial, by filing an appropriate application.

4. Per contra, the learned counsel for the respondent would submit that the aforesaid application has been filed after lapse of six years, therefore, the trial Court has rightly dismissed the application, by stating that the above said application has been filed belatedly. Therefore, the Civil Revision petition is liable to be dismissed.

5. By considering the facts and the rival submissions of the parties concerned and by providing an opportunity to the parties concerned, no prejudice would be caused to the respondents. The petitioners have specifically stated that the aforesaid typographical mistake has been committed in the written statement, only due to the bonafide reasons. The revenue records reveal that the actual extent of the property, therefore, the application is allowed.

6. In similar facts of the case, this Court has considered the amendment application in the following decision reported in **2002 (1) CTC 618** in the case of **Palaniammal Vs.**

Vs. K.Raja. Amendment application has been allowed if there is any typographical mistake in Survey No, or Door No., or other No. The relevant portion reported in **2002 (1) CTC 618** in the case of **Palaniammal Vs. V.K.Ramanathan and others** is extracted here under:

"15. The suit was filed on 23.2.2001. In the amendment petition, the plaintiff wants to include further prayer viz., for mandatory injunction directing the 4th defendant/Municipality to restore the water service connection. It is not the case of the second respondent that even on that day, plaintiff was aware about the change of water service connection in his name on 21.12.2000. The order changing water service connection in the name of second defendant can only because of and pursuant to the change of property tax assessment in the name of the second defendant/second respondent. Or in other words, but for the change in the property tax assessment in the name of second defendant, 4th defendant/Municipality would not have passed the order changing the water service connection in the name of second defendant. In these circumstances, the relief that is sought for can be said to be only in the nature of ancillary and incidental to the relief that has already been sought for in the plaint. Certainly it cannot be said that the plaintiff has come forward with a new case on the basis of new cause of action. The courts can certainly in considering the application for amendment can take note of the subsequent

events. In fact, the Supreme Court in the ruling *B.K. Narayana Pillai v. Parameswaran Pillai*, approved the ruling reported in *Ganesh Trading Co., v. Moji Ram*, (cited supra) wherein the Court held that the amendment should be allowed when the same are in the nature of promoting the ends of justice and not for defeating them and that all amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defence taken.

16. To sum up the legal position, (1) The power to allow amendment is wide and hence the Court should not adopt hyper technical approach but on the other hand liberal approach should be the general rule particularly in cases where the other side can be compensated with costs.

(2) The general rule is that the party is not allowed to set up new case or new cause of action.

(3) Technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are allowed in the pleadings to avoid multiplicity of litigation.

(4) Courts cannot go into the truth or falsity of the proposed amendments sought for at the time of considering the application for amendment.

(5) All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the

proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.

(6) All reliefs ancillary to main relief and reliefs which are in the nature of additional reliefs should be allowed as general rule.

(7) Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed but however, the party who is put to inconvenience should be suitably paid. The Court has to only see that the error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

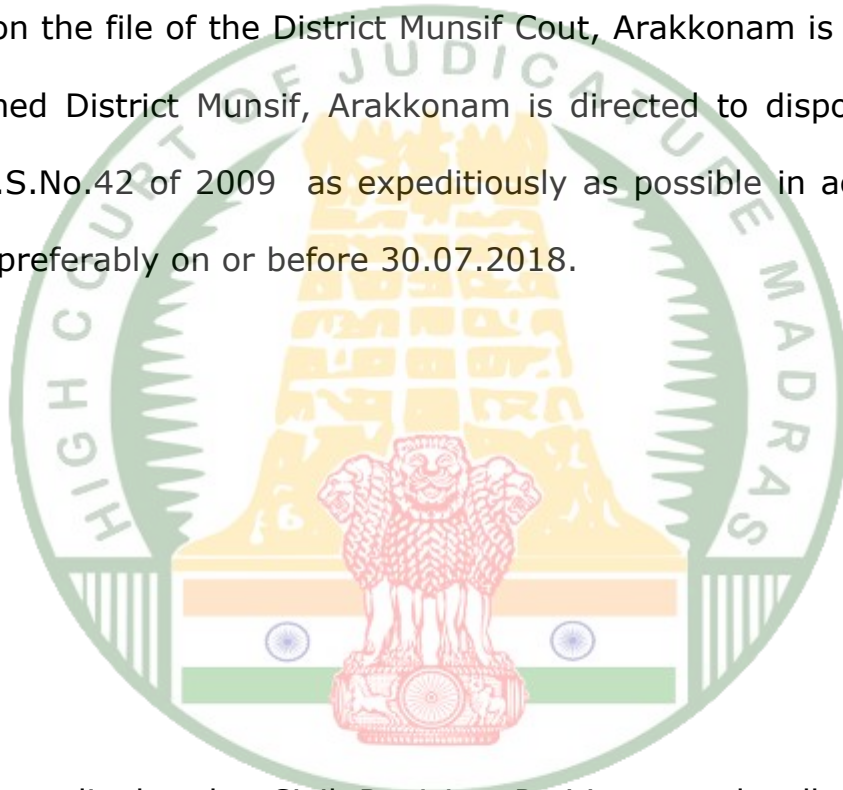
(8) The delay in filing petition for amendment should be properly compensated by cost and the error or mistake, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

17. In the result, the revision petition is allowed. The order of the District Munsif, Namakkal dated 14.9.2001 in I.A. No. 413 of 2001 in O.S.117 of 2001 is hereby set aside. There will be no order as to costs. Connected C.M.P.22660 of 2001 is closed."

7. In the present case on hand, the petitioners being the defendants has made typographical mistake in the written statement in respect of the extent of the land in the suit property. Therefore, there is no prejudice caused to the respondent, by allowing the application. Hence, the impugned order is set aside. At this stage, on

Instruction, both parties undertakes to co-operate for disposal of the suit, as the time fixed by this Court.

8. In view of the aforesaid facts and the decision cited supra, the impugned order dated 03.03.2016 in I.A.No.650 of 2015 in O.S.No.42 of 2009 on the file of the District Munsif Court, Arakkonam is set aside. The learned District Munsif, Arakkonam is directed to dispose of the suit in O.S.No.42 of 2009 as expeditiously as possible in accordance with law preferably on or before 30.07.2018.



9. Accordingly, the Civil Revision Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

WEB COPY

09.03.2018

ah

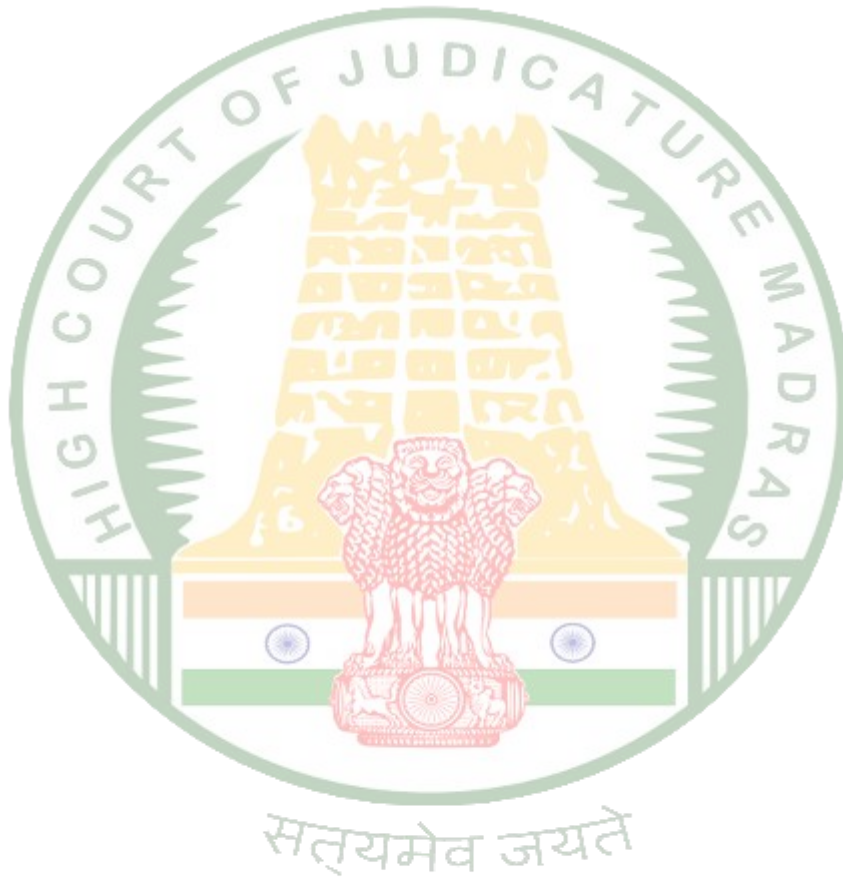
Speaking/Non-Speaking order

Index : Yes/No

Internet: Yes/No

To

The District Munsif Court, Arakkonam.



WEB COPY

D. KRISHNAKUMAR J.,

ah



CRP (PD).No.1617 of 2016

WEB COPY

09.03.2018