

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.4828 of 2013  
and M.P.No.1 of 2013

K.Venkatasubramanian .. Petitioner

Vs.

1.S.Kannammal

2.Dhanasekaran

.. Respondents

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, against fair and decretal order dated 20.06.2013 made in I.A.No.304 of 2013 in O.S.No.386 of 2005 on the file of the I Additional District Munsif Court, Kallakurichi.

For Petitioner : Mr.J.Ramakrishnan

for Mr.M.Purushothaman

For R1 : Mr.M.Prabaharan

For R2 : M/s.S.R.Sumathy for R2

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ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.06.2013 made in I.A.No.304 of 2013 in O.S.No.386 of 2005 on the file of the I Additional District Munsif Court, Kallakurichi.

2. The petitioner is plaintiff and the respondents are the defendants in O.S.No.386 of 2005 on the file of the I Additional District Munsif Court, Kallakurichi. The petitioner filed said suit for permanent injunction restraining the respondents from alienating or creating any encumbrance over the suit property. Subsequently, the petitioner filed I.A.No.1333 of 2007 for amendment to include the relief of declaration and recovery of possession. The said amendment application was allowed. Both the respondents filed written statement and are contesting the suit. The trial commenced. The petitioner filed present I.A.No.304 of 2013 for amendment of the plaint to include more properties mentioned in the petition and to amend the valuation.

3. According to the petitioner, he came to know about the properties left out only when he was cross-examined and contended

that unless amendment is allowed, the petitioner will be put to irreparable loss and hardship and he has to file separate suit and prayed for allowing the application.

4. The second respondent filed counter affidavit and opposed the said application and submitted that earlier, the petitioner filed three applications in I.A.No.4633 of 2005 for filing reply statement, I.A.No.2789 of 2006 for amendment and I.A.No.1333 of 2007 for amendment. All the applications were allowed and the case was listed and the petitioner again filed another petition for removal from the list and again filed I.A.No.1160 of 2009 for amendment. The said application was dismissed. The respondents filed applications to reopen the case and recall P.W.1 for further cross-examination. The said applications were allowed and P.W.1 was recalled and after examination, the suit was posted for defendants' side evidence. At that stage, the petitioner has come out with the present application. The claim of the petitioner is barred by limitation and devoid of merits.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, partly

allowed the application with regard to inclusion of the Item Nos. 2 and 3 of the properties and dismissed the application in respect of other properties.

6. Against the said order dated 20.06.2013 made in I.A.No.304 of 2013 in O.S.No.386 of 2005, the petitioner has filed the present Civil Revision Petition.

7. The learned counsel for the petitioner contended that the learned Judge ought to have considered the application for amendment liberally and erred in allowing the application partly with regard to Item Nos.2 and 3 and dismissing the application in respect of other properties. The learned Judge failed to see that the petitioner came to know of these properties only during cross-examination by the respondents. The question of limitation does not arise while considering the application for amendment and in support of his contention, he relied on the following two judgments:

(i) **(2001) 2 SCC 472 (Ragu Thilak D.John v. S.Rayappan and others);**

*"5. After referring to the judgments in Charan Das v. Amir Khan [AIR 1921 PC 50], L.J.*

*Leach & Co. Ltd. & Anr. v. Jardine Skinner & Company* [AIR 1957 SCR 438], *Smt. Ganga Bai v. Vijay Kumar & Ors.* [1974 (2) SCC 393], *M/s. Ganesh Trading Co. v. Moji Ram* [1978 (2) SCC 91] and various other authorities, this Court in *B.K. Narayana Pillai v. Parameswaran Pillai & Anr.* [JT 1999 (10) SC 61] held:

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for. "

***(ii) (2004) 6 SCC 415 (Pankaja and another v. Yellappa (dead) by legal heirs and others);***

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which

the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

8. The learned counsel for the first respondent contended that he is sailing with the petitioner and prayed for allowing the Civil Revision Petition to include the other properties also.

9. The learned counsel for the second respondent reiterated the averments made in the counter affidavit and contended that the petitioner is introducing a new case and claim of the petitioner is barred by limitation. Earlier, the petitioner filed two applications for amendment to include the relief of declaration and to correct the initial. By filing the present application to include the properties, the petitioner is introducing a new case and new cause of action and the claim of the petitioner is barred by limitation. The learned Judge partly allowed the application considering all the materials by giving valid reason and prayed for dismissal of the present Civil revision petition.

10. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

11. From the materials available on record, it is seen that amendment now sought for by the petitioner is to include number of items in the schedule to the plaint. According to the petitioner, he came to know about this property only when he was cross-examined by the counsel for second respondent. This contention is untenable.

12. The learned Judge considering the pleadings and each and every documents filed by the parties, partly allowed the application with regard to two items only and dismissed the application in respect of other items. The learned Judge has given valid reason in the impugned order. In view of the above facts, the judgments relied on by the learned counsel for the petitioner do not advance the case of the petitioner. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 20.06.2013.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2018

Index:Yes/No

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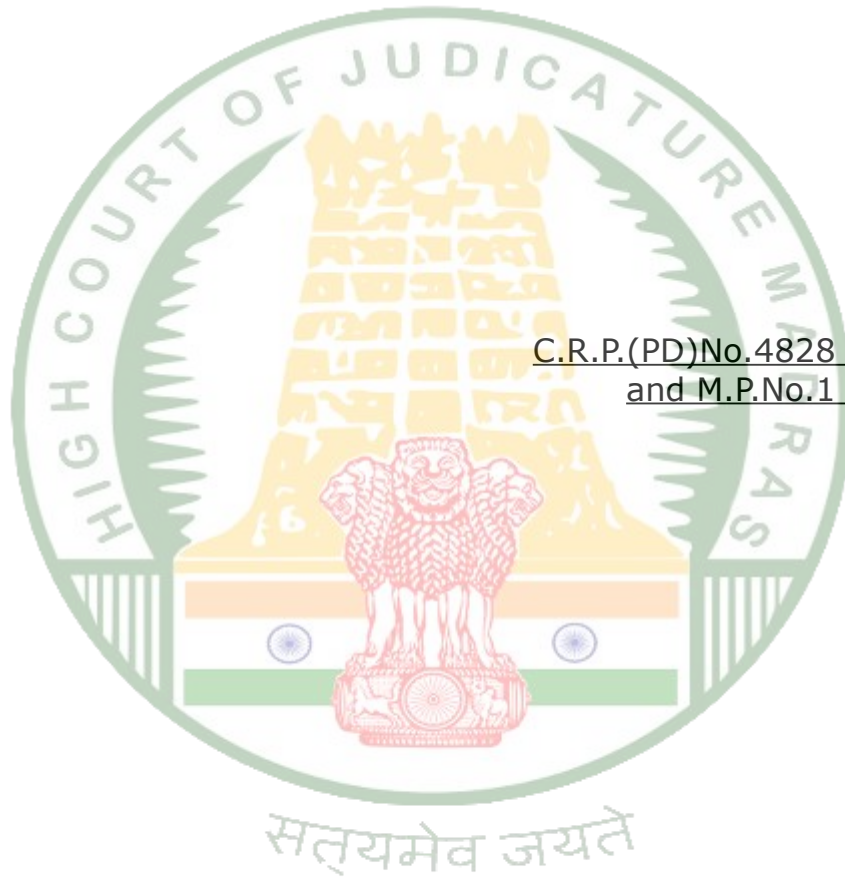
The I Additional District Munsif  
Kallakurichi.



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**V.M.VELUMANI,J.**

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