



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2018

DELIVERED ON : 13.11.2018

WEB COPY

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.162 of 2015 and
M.P.(MD)Nos.1 and 2 of 2015

1.Malaichamy
2.Ramaraj
3.Jeyaraman

.. Petitioners

VS

1.Subbbiah Thevar
2.Poolpandian

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 08.9.2014 made n I.A.No.956 of 2014 in O.S.No.318 of 2010 on the file of the Principal District Munsif Court, Sankarankoil.

For Petitioners : Mr.S.Ramesh @ Ramiah

For Respondents : Mr.R.Manimaran

ORDER

This revision is directed against the order of the learned Principal District Munsif, Sankarankoil dated 08.09.2014 made in I.A.No.956 of 2014 in O.S.No.318 of 2010, dismissing the petition filed by the petitioners under Order 6, Rule 17 of CPC.

2. The petitioners are plaintiffs and the respondents are defendants in the suit. The petitioners have filed the suit for declaration declaring that the suit property belongs to the plaintiffs and for permanent injunction restraining the defendant, their men and agents from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property and for costs.

3. Pending suit, the plaintiffs have filed I.A.No.956 of 2014 under Order 6, Rule 17 of CPC seeking to amend the plaint alleging that since the defendants have pleaded that S.No.244/1C belongs to the 2nd defendant and S.No.244/1D belongs to the 1st



defendant and the aforesaid properties were part of the plaint schedule property and also pleaded that they were in possession and enjoyment of the same, it was necessary to amend the plaint by seeking the prayer for possession of the same. The Advocate Commissioner also in his report and sketch identified IJKL portion shall form part of the suit property. Hence, the plaintiffs have filed the petition seeking amendment of the plaint as detailed in the petition.

4. Resisting the petition, the defendants have filed counter stating that there was no bona fide in the petition filed by the plaintiffs. Already witnesses were examined and when the suit was posted for arguments, in order to drag on the proceedings, the plaintiffs have filed the petition. In the written statement, the defendants have stated that the plaintiffs were unable to identify the suit property. Despite said statement made by the defendants, belatedly, the plaintiffs have filed the petition.

5. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the plaintiffs have filed the present revision.

6. Assailing the order of the trial Court, the learned counsel for the petitioners/plaintiffs submitted that the trial Court failed to appreciate the real controversy between the parties in relation to the title and the extent of their entitlements. The learned counsel submitted that the trial Court failed to appreciate that both the plaintiffs and defendants claim to have purchased the property from the same common ancestor and their claims were based on their respective title. The trial Court failed to appreciate that the amendment seeking recovery of possession instead of injunction was more by way of abundant caution. The learned counsel then submitted that the trial Court failed to appreciate that the amendment for recovery of possession would help the Court in deciding the grant of consequential relief based on the question of decision of title. The learned counsel next submitted that the trial Court failed to appreciate that the proposed amendment would avoid multiplicity of proceedings and also would help the trial Court in resolving the controversy in a better way. In support, the learned counsel relied upon the decisions in *Ragu Thilak D. John v. S. Rayappan and others*, reported in (2001) 2 SCC 472 and *Arumugathammal and others v. Lakshimiammal and another*, reported in 2004-4-L.W. 646.

7. Per contra, the learned counsel for the respondents/defendants would contend that the plaintiffs have come up with amendment petition after the evidence was concluded from the trial Court. The petition filed by the plaintiffs legally not maintainable as S.No.244/1C and S.No.244/1D come under IJKL portion and the said portion was form part of the suit property.



The learned counsel would submit that when the suit was posted for arguments, the plaintiffs have come up with amendment petition belatedly.

8. I heard Mr.S.Ramesh @ Ramiah, learned counsel for the petitioners and Mr.R.Manimaran, learned counsel for the respondents and also perused the materials available on record.

9. The grievance of the plaintiffs is that the portion IJKL noted by the Advocate Commissioner comes under the portion of S.No.244/1C and 244/1D which form part of the suit property and the defendants have claimed that they were in possession of the same. Therefore, it is necessary to amend the plaint seeking recovery of possession from the defendants. According to the plaintiffs, the proposed amendment would minimise the litigation between the parties.

10. It appears that the plaintiffs have sought amendment of the suit prayer based on the report and sketch of the Advocate Commissioner, who had earlier visited the suit property and filed the report and sketch. The Advocate Commissioner has filed his report on 19.12.2012.

11. As rightly observed by the trial Court, there was no whisper that after filing of the suit the defendants have encroached upon the property or after filing of the suit, the defendants have acquired right over a portion of the suit property.

12. According to the plaintiffs, their father had purchased the suit property by a registered sale deed dated 16.3.1981 and he was in possession and enjoyment of the property mentioned in the sale deed. Subsequently, during June 2005, the plaintiffs were given 2 acres of land with specific four boundaries and from the date of purchase, the plaintiffs were in possession and enjoyment of the suit property.

13. In *Ragu Thilak D.John v. S.Rayappan and others*, supra, the Hon'ble Supreme Court held that the amendment sought could not be declined and 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 and the plea of limitation being disputed could be made a subject matter of issue after allowing the amendment prayed for.

14. Relying upon the decision of this Court in *Arumugathammal and others v. Lakshmiammal and another*, supra, the learned counsel for the plaintiffs submitted that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings. He would further submit that though in the suit,



evidence was closed, for proper adjudication of the suit, the amendment ought to have been allowed by the trial Court.

15. In *Arumugathammal and others v. Lakshmiammal and another*, supra, the learned Single Judge of this Court held as under:

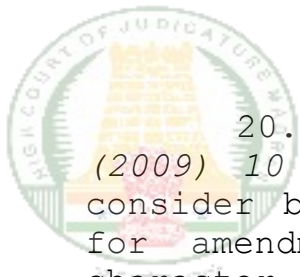
"10. The word 'The court may at any stage' is a discretionary power given to the court to allow an application for amendment. But, when the court comes to the conclusion that such amendments are necessary for the purpose of determining the real question in controversy between the parties, it shall allow the amendment. Further, the word 'proceedings' used in Rule 17 has got to be considered with reference to the context in which it has been used. There is nothing in the section to show that at any stage of the proceedings, it does not relate to the appeal, which may arise out of the suit. In fact, now it is well settled law that an appeal is a continuation of the suit. Whenever an appeal lies against any decree, the appeal is filed in accordance with law and the finality of the decree of the trial court comes to an end and therefore, it is clear that an application for amendment could be filed even before the appellate court."

16. In the aforesaid case, after filing of the suit, the defendants therein have encroached upon a portion of the suit property and due to inadvertence, the prayer for recovery of possession omitted to be sought for in the suit. In such circumstances, at the appellate stage, the learned Single Judge of this Court permitted the amendment.

17. In the case on hand, in their plaint, the plaintiffs have averred that they were in possession of the suit property from 1981 and both parties have also let in evidence and produced documents to the said effect. When that being so, if the amendment seeking for recovery of possession is ordered, naturally, the nature and character of the suit would be altered.

18. It is well settled 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.

19. Catena of decisions would say that even after commencement of trial, if the Court deems fit and necessary to permit amendment of the pleadings, if it will not prejudice to the defendants and the relief sought is not barred by limitation.



20. In *Surender Kumar Sharma V. Makhan Singh*, reported in (2009) 10 SCC 626, the Hon'ble Supreme Court had an occasion to consider belated plea for amending the plaint and whether prayer for amendment of plaint allowed will change the nature and character of the suit. In the said case, the Hon'ble Apex Court has held under:

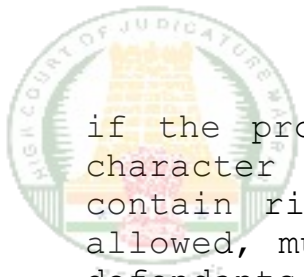
"As noted herein earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e., the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment."

21. It is settled that pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. Generally, it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. The question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down.

22. 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 straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

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23. In the case hand, as stated supra, the trial has concluded and the suit is pending for arguments and at this stage



if the proposed amendment is allowed, naturally, the nature and character of the suit would be altered, as the plaint averments contain rights of the plaintiffs. Further, if the amendment is allowed, much hardship and irreparable loss would be caused to the defendants. It is not the case of the plaintiffs that pending suit the defendants have encroached upon the suit property. When that being so, it is not appropriate on the part of the plaintiffs seeking amendment of the prayer at the stage of arguments of the suit. Further, by way of proposed amendment, the plaintiffs are introducing a new case.

24. No sufficient cause was shown by the plaintiffs for filing the petition for amendment after a prolonged period of nearly four years. The mistake crept was not a typographical mistake. Therefore, this Court find that there is no illegality and/or perversity in the order of the trial Court in dismissing the petition.

25. In the result:

(a) The Civil Revision Petition is dismissed by confirming the order passed in I.A.No.956 of 2014 in O.S.No.318 of 2010 dated 08.09.2014 on the file of the learned Principal District Munsif Court, Sankarankoil. No costs. Consequently, connected miscellaneous petitions are closed;

(b) It is made clear that it is open to the trial Court to decide the suit on merits and in accordance with law uninfluenced by the order of this Court;

(c) Since the suit is of the year 2010 and the plaintiffs are senior citizens, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The Principal District Munsif,
Sankarankoil.

+1cc to Mr.S.Ramesh alias Ramiah, Advocate, Sr.No.95084.

order made in
C.R.P. (MD) (PD) No.162 of 2015 and
M.P. (MD) Nos.1 and 2 of 2015
13.11.2018