



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on : 21.08.2018

CORAM

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

C.R.P. (MD) (PD) No.1679 of 2015

and

M.P. (MD) No.1 of 2015

1.Ida
2.Menaga
3.Priyanga

... Revision Petitioners/Plaintiffs

vs.

1.Gnanadas
2.Mary (given up)
(2nd Respondent is given up vide Court
order dated 07.09.2015 made in
CRP (MD) No.1679/15 & MP (MD) No.1/15)
3.Nesabai

... Respondents/Dependents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 19.01.2015 passed by the learned II Additional District Munsif, Kuzhithurai, dismissing the application for amend the Resurvey numbers in the schedule of property filed by the petitioner in I.A.No.415 of 2014 in O.S.No.128 of 2010.

For Petitioners : Mr.S.Sivakumar

For Respondents : Mrs.J.Anandhavalli (for R1)
R2 - Given up
R3 - No Appearance

ORDER

Challenging the order of dismissal made in I.A.No.415 of 2014 in O.S.No.128 of 2010 dated 19.01.2015, the Petitioners/Plaintiffs have filed this Civil Revision Petition.

2.The contention of the learned counsel for the Petitioners is that the Petitioners filed the suit in O.S.No.128 of 2010 against the learned II Additional District Munsif, Kuzhithurai for partition and separate possession. When the case was posted for defendants' evidence, the Petitioners filed



amendment application under Order 6, Rule 17 of CPC in I.A.No.415 of 2014 to amend the plaint Para 2 and the schedule of property to include the actual Re-survey numbers.

3.It is the contention of the learned counsel for the Revision petitioners that the Petitioners came to know about the Re-survey numbers of their ancestor's property only after the vendees, who were brought on record in the suit and who purchased the ancestor's property from the respondents herein. The Petitioners have collected all the Re-survey numbers of their ancestor's property from the sale deed executed by the respondents 2 and 3 herein and filed the amendment petition. Since all the documents are in the custody of the 1st respondent, the Petitioners are not in a position to mention the correct schedule of properties in the plaint.

4.The Learned Counsel for the petitioners would further submit that it is only a suit for partition and therefore the present amendment to include the actual Re-survey numbers in the suit schedule property will in no way affect the rights of the respondents herein and the same is maintainable. In support of his contention, the learned counsel for the Petitioners relied on two decisions of this Court reported in 2013 (1) TNCJ 216 (Mad), and unreported Judgment made in CRP.(PD)(MD).Nos.2694 and 2695 of 2012 dated 03.01.2013 and argued that the amendment Petition to include new properties and to delete certain items of properties from the suit schedule properties are maintainable. Therefore, the present application, which is only to amend the plaint by incorporating the actual Re-survey numbers is very much maintainable in law and it also comes within the ambit of order 6, rule 17 CPC and the same is liable to be allowed. However the learned Trial Judge has erroneously dismissed the same by holding that the present amendment will totally change the character of the suit. Therefore he would submit that the above Civil Revision Petition is liable to be allowed.

5.Per contra, the learned counsel for the 1st respondent herein would submit that a bare perusal of the affidavit filed in support of the amendment application will go to show that the same is bereft of particulars. According to the learned counsel for the 1st respondent, the Revision Petitioners, except, mentioning eight Re-survey numbers to be incorporated in the suit schedule property, there is no reason whatsoever assigned in the amendment application. Further, the amendment petition was filed when the defendants' evidence was going on with an intention to delay the disposal of the suit. Hence the learned counsel prays this Court to dismiss the Civil Revision Petition.

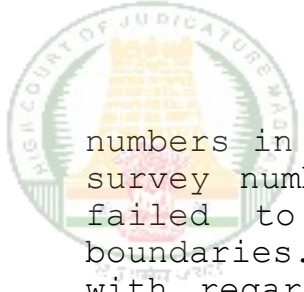
6.I heard Mr.S.Sivakumar, learned counsel appearing for the petitioners and Mrs.J.Anandhavalli, learned counsel for the 1st respondent and perused the entire materials available on record.



7. In so far as amendment of plaint is concerned, there are two stages, one is pre-trial amendment and another one is post trial amendment. This case is coming in the second category i.e., post trial amendment. If the amendment is necessary for the purpose of deciding the real issues in controversy, it has to be allowed. Now, what is to be decided is whether the amendment petition is to be allowed or not. At this juncture, this Court would like to refer the decisions relied on by the Learned Counsel for the Revision Petitioners reported in 2013 (1) TNCJ 216 (Mad), in the case of Ravi and another -Vs- Chandra and others, wherein in paragraph 15 it has been held as follows:

"15. As stated supra, in a suit for partition, all the properties are to be partitioned and as laid down by the Honourable Supreme Court in the judgment reported in Ravajeetu Builders & Developers v. Narayanasamy & sons, 2009(10) SCC 84 = 2009(13) SCALE 241, amendment can be allowed for proper and effective adjudication of a case and refusing the amendment would lead to the multiplicity of proceedings. In this case, admittedly there were some laches on the part of the revision petitioners in filing the application for amendment earlier, but considering the interest of the parties and to avoid multiplicity of proceedings and being a suit for partition, in my opinion, the petition filed by the revision petitioners for amendment to include some other properties in the plaint stating that they are also liable to be partitioned can be allowed as that would put to an end to the litigation and it would also avoid the multiplicity of proceedings. Further, while allowing or disallowing the amendment application, the Court should not go into the merits of the amendment and the lower Court has committed an error in deciding the merits of the amendment and held that the properties, which are sought to be included are the properties exclusively belong to the plaintiffs 1 and 2. Therefore, without going into the merits, whether the properties, which are sought to be included in the plaint schedule by way of amendment belongs to the joint family of the plaintiffs and the defendants, in a suit for partition, the parties are entitled to bring to the notice of the Court about the properties to be included for partition."

8. There is no quarrel over the above proposition of law that in a partition suit amendment can be allowed to include some other properties or to delete certain properties in the Plaint. Further, there is also no dispute over the fact that amendment can be allowed at any stage of the suit. But, in the present case on hand, the Revision Petitioners/Plaintiffs have not sought to include certain item of properties which are left out at the time of filing the Plaint or they want to delete certain item of properties which are included by mistake. In this case, the Plaintiffs sought to amend Para 2 of the Plaint and also to mention the correct Re-survey



numbers in the schedule of properties. In order to correlate the Re-survey numbers given in the amendment application, the plaintiffs failed to furnish the correct old Survey numbers with four boundaries. Further, the Plaintiffs have not furnished any details with regard to the amendment sought for. Since it is a suit for partition any number of partition suits can be filed till final decree is passed by adding proper parties and also by including all the properties.

9. In the present case if the Plaintiffs are permitted to amend the suit schedule property with the Re-survey numbers mentioned in the Amendment Petition, it will change the total character of the suit, because in the Plaint suit schedule properties, the properties mentioned are entirely different from the present Re-survey numbers. That apart, there is no description for the several Re-survey numbers sought to be included in the suit schedule properties. In the absence of any particulars the Plaintiffs cannot be permitted to amend the Plaint and the suit schedule of properties. Apart from that as rightly pointed out by the learned Trial Judge, the present amendment is post Trial Amendment and the same cannot be considered liberally as that of pre-trial Amendment application.

10. In such circumstances, the amendment sought for by the Plaintiffs cannot be granted merely because it is a partition suit. In view of the same, the Impugned order of the Trial Court needs no interference and the same is liable to be confirmed. Hence, I am not inclined to interfere with the well considered order passed by the Learned Trial Judge.

11. In the result, this Civil Revision Petition is dismissed and the order and decree made in I.A.No.415 of 2014 in O.S.No.128 of 2010 dated 19.01.2015 on the file of the learned II Additional District Munsif, Kuzhithurai is hereby confirmed. However, considering the fact that the suit is of the year 2010 and the same is pending for more than 8 years, the Learned Trial Judge is directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-II)



To

The II Additional District Munsif,
Kuzhithurai.

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order made in
C.R.P. (MD) (PD) No.1679 of 2015
and
M.P. (MD) No.1 of 2015
21.08.2018

VSV

TR/SKN/SAR-II (08.10.2018) 5P 2C