



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1879 of 2015

and

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

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1. Jebamony
2. Paulmony ... Petitioners/Petitioners/Plaintiffs

-vs-

1. Chinthamony
2. Sighamony
3. Rajamony
4. Kanagamony
5. Poomony
6. Sareaswathy @ Filorence
7. Santha Rani @ Rani ... Respondents/Respondents/Defendants

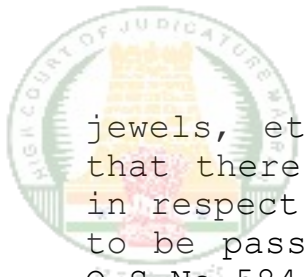
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the Fair and Decreetal Order dated 30.04.2015 passed in I.A.No.127 of 2015 in O.S.No.480 of 2004 on the file of the II Additional District Munsif, Kuzhithurai and allow the present Civil Revision Petition.

For Petitioners : Mrs.J.Anandhavalli
For R1, R3, R6 & R7 : No Appearance
For R2, R4 & R5 : Mr.T.Jeen Joseph

O R D E R

The revision petitioners are the plaintiffs in O.S.No.480 of 2004 on the file of the II Additional District Munsif, Kuzhithurai and in the suit, the revision petitioners/plaintiffs sought for partition among various other reliefs. During pendency of the suit, the petitioners/plaintiffs have filed an application in I.A.No.127 of 2015 seeking certain addition in paragraph no.3 of the plaint as well as in the prayer portion of the suit and the said application was dismissed by the Trial Court, stating *inter alia* that the amendment would be prejudicial both to the family members of the petitioners and to the respondents herein. Challenging the said order, the petitioners are before this Court.

2. It is the case of the revision petitioners that the entire suit schedule property had devolved upon nine legal heirs, after the demise of their parents, namely, Chellakkon Nadar and his wife Chellammal and defendants 6 and 7 are the daughters of the said Chellakkon, who had already relinquished their rights in the property, as they had received Sridhanam by way of cash,



jewels, etc. It is the further case of the revision petitioners that there was also a decree for redemption in O.S.No.584 of 1977 in respect of a portion of the suit property and hence, the decree to be passed in the suit is necessarily subject to the decree in O.S.No.584 of 1977.

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3. The revision petitioners state that while drafting the plaint, it was indicated as to the exact share in the property as $1/9^{\text{th}}$ share instead of $1/7^{\text{th}}$ share and in view of the subsequent development and surrender of share by the defendants 6 & 7, the plaint has to be necessarily amended. Contending that the Trial Court, without considering the factual aspects, has simply dismissed the application, it is prayed that the order of the Trial Court needs interference by this Court.

4. The revision petitioners, in support of their submission that the amendment sought is permissible under law, has relied upon the following judgments of the Hon'ble Supreme Court:

i) **Sampath Kumar vs. Ayyakannu and another**, reported in **(2002) 7 SCC 559**;

"10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, [2001] % SCC 561.

11. In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the



right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in culcating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

12. On the averments made in the application, the same ought to have been allowed. If the facts alleged by plaintiff are not correct it is open for the defendant to take such plea in the written statement and if the plaintiff fails in substantiating the factual averments and/ or the defendant succeeds in substantiating the plea which he would obviously be permitted to raise in his pleading by way of consequential amendment then the suit shall be liable to be dismissed. The defendant is not prejudiced, more so when the amendment was sought for commencement of the trial.

13. For the foregoing reasons, the appeal is allowed. The impugned orders of the High Court and the Trial Court are set aside. The plaintiff is permitted to incorporate the pleas sought to be raised by way of amendment in the original plaint foregoing the plea to the extent given up by him before the Trial Court. However, in view of the delay in making the application for amendment, it is directed that the plaintiff shall pay a cost of Rs. 2,000 (Rupees Two Thousand only) as a condition precedent to incorporating the amendment in the plaint. The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed."

ii) **Usha Devi vs. Rijwan Ahamd and Others**, reported in **(2008)**

3 MLJ 287 (SC);

"I. Though there was lack of due diligence on the part of the plaintiff inasmuch as the wrong description of the suit property was pointedly brought up by the defendants not only in the written statement but also in course of the proceedings of the Case, the prayer for amendment related to correction of description of suit property in plaint deserves to be allowed, in view of the decision in Sajjan Kumar v. Ram Kishan (2005) 13 SCC 89 which is closer on facts wherein it was held that when the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy



between the parties and the refusal to permit amendment would create needless complications at the stage of execution, the amendment should be allowed."

5. Per contra, learned counsel for the respondents 2, 4 & 5 has contended that the plaintiffs are disentitled to say that the defendants 6 & 7 have no share in the property and therefore, the share has to be reduced to $1/7^{\text{th}}$. The marriage of the 6^{th} defendant was an arranged marriage duly conducted by their father and though huge amount was incurred for her marriage, she had also contributed much to reduce the burden of her father in terms of money, while arranging marriage for the 7^{th} defendant / her sister. It is also contended that because sridhana was given to them, it cannot be said that they are not eligible to claim share in the property.

6. Heard the learned counsel for the petitioners and the learned counsel for R2, R4 and R5 and also perused the material documents available on record.

7. It is not in dispute that the dispute arose among the family members of the parties. The plaintiffs claim that pursuant to relinquishment in the property by the defendants 6 and 7, necessary amendment has to be carried out in the plaint by duly mentioning the share as $1/7^{\text{th}}$ in lieu of $1/9^{\text{th}}$. It is contended by the petitioners that due to subsequent development, such amendment is necessary and the proposed amendment will not alter the character of the suit at any cost.

8. It is pertinent to mention here that the proposed amendment sought to be incorporated does not alter the basic structure of the suit and what is sought to be changed is the description of share in the property and the decree of redemption. As pointed out by the Hon'ble Supreme Court, the refusal to permit the proposed amendment would create needless complications at the stage of execution and multiplicity of proceedings before the Trial Court, flowing therefrom.

9. A bare reading of Order 6 Rule 17 CPC would amply prove the fact that the pleadings can be allowed to be either altered or amended at any stage of the proceedings, as such amendments will determine the real questions in controversy between the parties. It cannot also be said there is a delay in approaching the Court, as the plaintiffs sought to amend the suit on the basis of the subsequent relinquishment on the part of the defendants 6 & 7.

10. In view of the foregoing discussions and observations and finding merit in the contention made by the petitioners/plaintiffs, this Court is of the view that the order of the Trial Court is liable to be set aside.



10. In the result,

a) this civil revision petition is allowed and the order dated 30.04.2015 passed in I.A.No.127 of 2015 in O.S.No.480 of 2004 by the learned II Additional District Munsif, Kuzhithurai, is hereby set aside;

b) the revision petitioner / plaintiff is permitted to carry out necessary amendment in the plaint to the extent sought by him and file an amended copy, within a period of two weeks from the date of receipt of a copy of this order;

c) the respondents, after amendment, shall file an additional written statement to the amended copy of the plaint, within a period of two weeks thereafter;

d) the Trial Court, on filing additional written statement by the respondents, is directed to dispose of the suit within a period of two months from the date of such filing, without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

1. The II Additional District Munsif,
Kuzhithurai
2. The Record Keeper, VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mrs.J.Anandhavalli, Advocate Sr.No.71014

+1cc to Mr.T.Jeen Joseph, Advocate Sr.No.71087

AR

VB/RP/SAR3/10.09.2018/5P/6C