WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD) No.1934 of 2015
and M.P.(MD) No.1 of 2015

Rajendran ... Petitioner/Respondent/Defendant

-vs-

Parvathy ... Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order and decree dated 09.01.2015 made in I.A.No.396 of 2014 in O.S.No.201 of 2010 on the file of the 1st Additional District Munsif, Kumbakonam and allow this Civil Revision Petition.

For Petitioner : Mr.G.Gomathi Sankar
For Respondent : Mr.I.Suthakaran

*****

O R D E R

The revision petitioner is the defendant in O.S.No.201 of 2010 on the file of the learned 1st Additional District Munsif, Kumbakonam and in the suit, the plaintiff / respondent herein sought for permanent injunction, etc. During pendency of the suit, the plaintiff had filed an application in I.A.No.396 of 2014, seeking rectification of mistake in the plaint schedule by way of amendment by incorporating "E,F,G,H lane alone" instead of "including lane" and the said application was allowed by the Trial Court. Challenging the said order, the defendant / petitioner herein is before this Court.

2. It is the case of the revision petitioner that the plaintiff had filed a suit in O.S.No.201 of 2010 on the 1st Additional District Munsif, Kumbakonam for permanent injunction and after commencement of trial, the plaintiff, being already aware of the fact that the suit property given by her was wrong and having kept quiet for several years, has now come up with the plea of wrong description of the suit schedule property. It is the further case of the petitioner that the said act of the plaintiff is only to drag on the proceedings and nothing else.

https://hcservices.ecourts.gov.in/hcservices/

3. The revision petitioner states that it is a settled law that no petition for amendment shall be entertained after commencement of the trial, unless the Court comes to the conclusion that inspite of due diligence, the party could not raise the matter before commencement of trial and in this case, the plaintiff did not aver anything about the due diligence taken by him.

4. Learned counsel for the plaintiff/respondent has contended that the examination-in-chief has already been completed and the case is posted for cross examination of plaintiff by the defendant. At that juncture, it was found that the property had been wrongly described as if there is a dispute with regard to the entire lane, whereas the dispute is only in respect of E,F,G,H lane alone. It is further contended that no prejudice would be caused to the petitioner by way of such amendment and therefore, the petition is liable to be dismissed.

5. Heard the learned counsel on either side and this Court also perused the material documents placed on record.

6. To decide the issue whether the order of the Trial Court in allowing amendment is right or not, it is useful to refer to the following judgments of the Hon'ble Supreme Court:

i) *Sampath Kumar vs. Ayyakannu and another*, reported in *(2002) 7 SCC 559;* wherein it has been held as follows:

> "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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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 b 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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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."

7. It is not in dispute that the plaintiff had sought for permanent injunction and in the interregnum period, she sought to amend the suit so as to incorporate the right description of suit schedule property, which was omitted to be mentioned due to oversight.

8. Learned counsel for the petitioner has submitted that it is impermissible to carry out amendment in the plaint after commencement of the trial. The said submission cannot be accepted, as the provisions of Order 6 Rule 17 CPC would make it clear that the pleadings can be allowed to be either altered or amended at any stage of the proceedings, in case such amendments determine the real questions in controversy between the parties. This Court, in the case of *Cholzhavammal vs. Elumalaigounder*, reported in *2011 (5) L.W.859*, has observed that while considering the application for amendment, it is for the Court to decide on the facts of each case.

9. Considering the overall facts and circumstances of the case, this Court is of the view that if the amendment is not allowed to be carried out, the issue cannot be resolved in the pending suit and there may raise difficulties at the time of execution proceedings and thus, the order of the Trial Court is perfectly valid and needs no interference by this Court.

10. In the result,

a) this civil revision petition is dismissed, confirming the order and decree dated 09.01.2015 made in I.A.No.396 of 2014 in O.S.No.201 of 2010 by the learned 1st Additional District Munsif, Kumbakonam;

b) considering the fact that the suit is of the year 2010, the Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order by conducting the trial on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To:

1. The 1st Additional District Munsif,
Kumbakonam.

COPY TO

The Record Keeper,
V.R.Section
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.I.SUTHAKARAN, Advocate, SR.No.67213
+1cc to Mr.G.GOMATHI SANKAR, Advocate, SR.No.67215

C.R.P.(PD)(MD) No.1934 of 2015
07.06.2018

AR
KK/TE/SAR-4/12.07.2018/5P-6C/

https://hcservices.ecourts.gov.in/hcservices/