



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD) (PD) .Nos.662 and 663 of 2014

and

M.P (MD) .No.1 of 2014

1.Utchimahali
2.Petchi
3.Anantha Narayanan ... Petitioners in both
(3rd Petitioner for himself and as petitions
power agent of 1st and 2nd Petitioners)

Vs.

1.P.Murugan
2.P.Kailasam
3.P.Arjunan ... Respondents in
both petitions

PRAYER IN BOTH PETITIONS : Petition filed under Article 227 of Constitution of India, against the fair and decreetal order passed in I.A.Nos.520, 521 of 2013 in O.S.No.2 of 2011 dated 17.12.2013 on the file of the II Additional District Munsif Court, Tirunelveli.

For Petitioners : Mr.S.Meenakshi Sundaram
Senior Counsel for
Mr.Manimaran
(in Both Cases)
For Respondents : Mr.T.S.R.Venkataramana
(In both cases)

COMON ORDER

These Civil Revision Petitions have been filed against the order passed in I.A.Nos.520, 521 of 2013 in O.S.No.2 of 2011 dated 17.12.2013 on the file of the II Additional District Munsif Court, Tirunelveli.

2.The brief facts that are necessary for disposal of these Civil Revision Petitions are as follows:-

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

3.The civil revision petitioners, as plaintiffs, filed a suit in O.S.No.2 of 2011 on the file of the II Additional District



Munsif Court, Tirunelveli, for declaration of title and for consequential permanent injunction restraining the defendants in the suit, namely, the respondents from interfering with their peaceful possession and enjoyment of the property. The suit property is an extent of 0.02.0 hectare approximately 5 cents in Survey No.1513/8A in Kangaikondan Rajapathy Village, Tirunelveli Taluk. The case of the plaintiff in brief in the suit is that the suit property, along with other properties, originally belonged to one Poovarammal and that she executed a sale deed on 19.06.1944 in respect of the entire property in favour of the sons of Masani konar for valid consideration. It is the further case of the plaintiff that the sons of Masani konar, by name Sudalaimuthu Konar, Subbaiah Konar, Petchi Konar and Puthiava Konar, divided the suit properties among themselves. The plaintiffs are the legal heirs of one Subbaiah Konar. They stated that the suit property was allotted to their father is a partition and separate patta was also issued to him.

4. After the suit was filed, the first defendant filed a written statement. Even in the written statement it is admitted that there was a partition among the sons of Masani konar, namely, Sudalaimuthu Konar and his three brothers. It is also his further case that the said SudalaiMuthu Konar executed a sale deed on 09.09.1954 in favour of one Chellaiah @ Nallan Konar, son of Arunachala konar for valid consideration. It is stated by the defendant that out of total extent of 35 cents in second item, 31 cents was purchased by the mother of defendants by name Piramuammal by a registered sale deed dated 09.08.1975. Therefore, the dispute in the present suit is regarding the manner in which the properties purchased by sons of Masani Konar was divided among them. It is admitted in this case that the suit was filed on 03.01.2011 and within 40 days written statement was filed on 13.02.2011. The plaintiff was examined in Chief on 03.09.2013. The cross examination of plaintiff was over by 16.09.2013. The two witnesses of the plaintiff was examined in Chief on 19.09.2013 and the evidence of P.W.2 was completed on 24.09.2013. It is admitted that the plaintiff side evidence was closed on 03.10.2013. Thereafter, the first defendant was examined on 07.10.2013 and D.W.2 was examined on 30.10.2013. After the cross examination of D.W.2 on 05.11.2013, the evidence was closed and the matter was posted for argument. It is at this stage the plaintiffs/ revision petitioners filed the petition in I.A.No.520 of 2013 for re-opening the case and I.A.No.521 of 2013 was filed for amendment of plaint. In the affidavit filed in support of the petition for amendment it is stated that the defendants in the suit have encroached into the suit property during May vacation in 2011. It is further stated that the plaintiffs came to know about the defence taken by the defendant recently. It is further stated that due to lack of knowledge about the plead the defendants has taken, they could not file the application earlier. The application was contested by the respondents herein mainly on the ground that there was no due diligence and that the amendment



application filed after the evidence was closed in this case cannot be entertained. It is further stated that the amendment cannot be entertained to fill up lacuna and that new plea by way of amendment is against the deposition of PW1 and PW2. Before proceeding further this Court has to elaborate the nature of the amendment sought for by the revision petitioner. The suit is one for declaration of title and permanent injunction. Since it is alleged by the revision petitioners that the defendants have encroached into the suit property in May 2011, the relief for recovery of possession was introduced by way of amendment. The other amendments are only formal which is consequential to the prayer for recovery of possession. However, the substantial amendment is to introduce para 5A, after 5 of the plaint, elaborating the oral partition that took place among the plaintiffs' father and his brothers in the year 1952. The learned counsel for the revision petitioner submitted that introduction of prayer for recovery of possession is relevant and it will not change the nature of suit as the encroachment by the defendants was after the suit. Since the plaintiff themselves have admitted that the defendants have encroached into the suit property and that they are in possession of the property, this Court is of the view that the amendment seeking the prayer for recovery of possession is appropriate and it has to be allowed keeping in mind the interest of justice. Apart from the fact that the amendment is for introducing a new prayer for recovery of possession, it is to be seen that a fresh suit by the same plaintiff for recovery of possession is not required and driving the plaintiff to file a fresh suit will only cause loss and prejudice to the parties.

5.As regards, entertaining the new paragraph, namely 5A in the plaint, this Court, of-course, find that the case of plaintiff has been elaborated in paragraph 5A. However, it is after recording the evidence and after examining the two witnesses on the side of plaintiff. Allowing this will amount to allow further evidence in a form of pleading to elaborate the case of the plaintiff.

6.The learned Senior Counsel for the revision petitioners relied upon the judgment of Hon'ble Supreme Court in the case of **Chakreshwari Construction Private Limited Vs. Manohar Lal** reported in **2017 (3) CTC 89**. It is also a case where the amendment was to elaborate the pleadings, which is found in the original petition for eviction. There also, it was amendment application and it was declined on the ground that it is filed belatedly. The Hon'ble Supreme Court followed the judgment of Hon'ble Supreme Court in yet another case in **Ravajeetu Builders and Developers v. Narayanaswamy & Sons and others** reported in **2009 (10) SCC 84**, wherein, the Hon'ble Supreme Court has held as follows:-

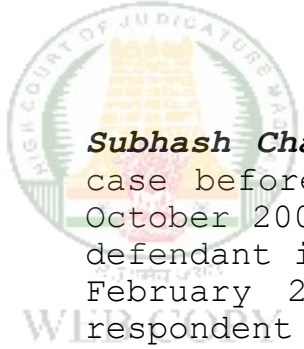
"63.On critically analysing both the English and Hindi versions, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the Application for Amendment:



1. Whether the amendment sought is imperative for proper and effective adjudication of the case;
2. Whether the Application for amendment is *bona fide* or *mala fide*;
3. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
4. Refusing amendment would in fact lead to injustice or lead to multiple litigation;
5. Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
6. as a general rule, the Court should decline amendments if a fresh Suit on the amended claims would be barred by limitation on the date of Application."

7. Even while extracting the above judgment, the Hon'ble Supreme Court has expressed the view that the principles, which are stated in paragraph 63 of the judgment in **Revajeetu Builders and Developers Vs. Narayanaswamy & Sons and ors.**, are not exhaustive but only illustrative. In **Chakreshwari Construction Private Limited Vs. Manohar Lal**, the Hon'ble Supreme Court has observed that when the amendment proposed is *bona fide*, relevant and necessary for deciding the rights of the parties involved in the *lis*, it can be allowed. It has further observed that unless the proposed amendment changes the nature of the case originally set up by the parties and if it does not introduce any fresh cause of action, it can be allowed. Para 16 of the judgment is relevant, which reads as follows:-

"16. It is for the reasons that firstly, the amendment proposed did not change the nature of the case originally set up by the Appellant in the Eviction Petition; Secondly, the amendment did not introduce any fresh cause of action; Thirdly, the amendment was relevant for deciding the question of subletting and availability of alternative accommodation with the respondent. Fourthly, the facts proposed in the amendment not being in the personal knowledge of the appellant and having obtained from the concerned State Department recently, the same could be allowed to be brought on record for its consideration; fifthly, no prejudice was likely to be caused to the respondent, if the Applications had been allowed because the respondent in such eventuality would have got an opportunity to make consequential amendment in his Written Statement and file Additional Documents in rebuttal; and lastly, in order to prove the case, the amendment proposed and permission to file documents should have been granted. "



Subhash Chander Bhatia reported in **2018 SAR (Civil) 271**. In the case before the Hon'ble Supreme Court, the suit was filed on 11 October 2002. The appellant before the Supreme Court, who is the defendant in the suit, filed a written statement in the suit on 22 February 2003. After framing the issue in August 2003, the respondent moved an application under order 6 Rule 17 of the Code of Civil procedure for amendment of the plaint on 07.02.2013, which was allowed on 21 September 2013. The appellant before the Supreme Court has filed a written statement to the amended plaint. Thereafter, the appellant filed an application for amendment of the written statement in March 2016, which was opposed by the respondent. Though the trial Court allowed the application, the High Court set aside the order in revision petition filed under Article 227 of the Constitution of India. The High Court of Delhi held that the amendment sought for in the written statement lacks bona fide and it was not necessary for determining the real question in controversy between the parties. After finding that the amendment in the written statement was only to elaborate the original written statement, the Hon'ble Supreme Court observed that at the stage of allowing the amendment the Court is not justified in considering the merits of the case, which is sought to be introduced by way of amendment. Further, the Hon'ble Supreme court held that what was sought to be introduced in the proposed amendment was an elaboration of what was stated in the original written statement and that therefore the decision that the High Court in the case getting into the merits of the case which was sought to be set up by the appellant in amendment is impermissible. Ultimately the Hon'ble Supreme Court set aside the impugned order passed by the High Court dismissing the petition for amendment even though the trial Court allowed the application for amendment. Since the amendment sought for in the case dwelt upon an existing defence, the Hon'ble Supreme Court observed that no prejudice would be caused to the plaintiff by accepting the amendments. However, in the same judgment in para 11 of the Hon'ble Supreme Court held as follows:-

"11. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In **Sadhna Lodh Vs. National Insurance Company**, this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is only to see whether an inferior Court or Tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under



Article 227 , the High Court does not act as an appellate Court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior Court or tribunal has passed and order. "

9. Even in that case the Hon'ble Supreme Court observed that in a case where the amendment application is filed after the commencement of the trial, unless due diligence on the part of the appellant is established, an amendment could not be allowed.

10. The learned Senior Counsel cited the judgment of Hon'ble Supreme Court in **Mohinder Kumar Mehra Vs. Roop Rani Mehra and ors.** reported in **2018 SAR (Civil) 220** wherein it has been held that even in a case where the amendment application was filed after the evidence, the Court can permit amendment if justice would be served by allowing application. The judgment of Hon'ble Supreme Court earlier in the case of **Mahila Ramkali Devi and Ors Vs. Nandram (Dead) through Legal representatives & Ors.**, reported in **(2015) 13 SCC 132** was relied upon by the Hon'ble Supreme Court. In that case it is held that a prayer cannot be refused for amendment of plaint, merely because there is some mistake, negligence, inadvertence or even infraction of rules of procedure if the amendment of pleadings is required. When the Court is satisfied that the party applying was acting without *mala fide* and unless it causes injury to his opponent, which cannot be compensated, it can entertain the application for amendment.

11. By referring to the judgment of the Hon'ble Supreme Court relied upon by the learned Senior Counsel appearing for the petitioner, this Court is convinced that the petitioner can be permitted to amend the written statement, insofar as the amended plaint seeks for relief of recovery of possession. The judgments relied upon by the Senior Counsel and the judgments relied upon by this Court in the earlier part of the judgment are helpful. However, the introduction of paragraph 5A, which is stated to be an elaboration of the original plaint, cannot be permitted after the entire evidence is over. The learned counsel appearing for the respondent relied upon the judgment of Hon'ble Supreme Court in the case of **Vidyabai and others Vs. Padmalatha and another** reported in **(2009) 2 SCC 409** wherein the Hon'ble Supreme Court after extracting the proviso to under Order VI Rule 17 Code of Civil Procedure held that unless the Court is satisfied that inspite of due diligence, party could not introduce amendment before commencement of trial, amendment after commencement of trial cannot be allowed

12. Hence, unless the person seeking amendment satisfies the Court and the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial, amendment cannot be entertained. The said position expressed by Hon'ble Supreme Court was also followed by



13. Considering the rival submissions and the precedents relied upon by both side, this Court has no hesitation to hold that the introduction of para 5A of the plaint by way of amendment after the closure of evidence of both sides cannot be permitted, in view of the proviso to Order VI Rule 17 CPC. Further, this Court wants to add something more in this context. The written statement was filed immediately after the plaint was presented before this Court. Of-course the evidence has also commenced. The plaintiff examined two witnesses and defendants have examined two witnesses. The present amendment petition has been filed only after the closure of evidence of both sides. It is to be noted that the partition among the sons of Masani Konar, namely, Sudalaimuthu Konar and his three brothers is admitted by both sides. The dispute is only about the manner in which properties were allotted in the oral partition. The plaintiff states that the suit property was allotted to the share of Subbiah Konar and it is contended by the defendant that the suit property was allotted to Sudalaimuthu Konar, who executed a sale deed on 09.09.1954 in favour of one Sellaiah @ Nallan S/o Arunachala Konar. The defendant claims right on the basis of the sale deed that was obtained by the mother of defendants on 09.08.1975. The specific plea that was raised in the written statement was known to the plaintiff even in the year 2011 ie., the written statement was filed in February 2011 within 40 days from the date of presentation of the plaint on 03.01.2011. The evidence is almost over. The manner in which the oral partition has taken place has been spoken by the plaintiff and the defendants. The plaintiff cannot be permitted to amend the plaint to elaborate the original plaint after the entire evidence was closed. If this is permitted, it will lead to or likely to cause immense hardship to other side. The several discrepancies which has not been explained by the plaintiff even at the time of evidence can be



filled up successfully. Therefore, the amendment insofar as it relates to introduction of para 5A to the plaint cannot be permitted, after the evidence of both sides.

14. As a result, this Court is of the view that the Civil Revision Petitions are partly allowed. The order passed by the learned Additional District Munsif, Tirunelveli, in I.A.No.520 of 2013 to re-open the cases is set aside and in I.A.No.520 of 2013 is allowed for the limited extent of permitting to amend the plaint in O.S.No.2 of 2011 regarding the inclusion of new prayer for recovery of possession and other consequential aspects. The order of learned II Additional District Munsif, Tirunelveli in I.A.No.521 of 2013 is also set aside and the amendment of plaint as sought for in I.A.No.521 of 2013 insofar as it relates to add a new prayer for recovery of possession and consequential alteration in the plaint as found in paragraph 2, 3 and 4 of the petition. The petition for amendment seeking to introduce para 5A stands dismissed. It is open to the respondent to file additional written statement in response to the new prayer now sought for, permitting the plaintiff to seek recovery of possession. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar (CS-I)

To

The II Additional District Munsif Court,
Tirunelveli.

+1 CC To MR.R.MANIMARAN, Advocate SR. NO. 74300

+1 CC To MR.T.S.R.VENKAT RAMANA, Advocate SR. NO. 74410

C.R.P (MD) (PD) .Nos.662 and 663 of 2014

20.07.2018

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