



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27.06.2018

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

C.R.P.(MD) (PD)No.2390 of 2015

and

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

1.Pushpavalli

2.Pottimuthu

3.Narayanamoorthy

4.Mulapporul

.. Petitioners/Petitioners/Plaintiffs

vs.

1.Rameela

2.Kannan

3.Gunavathi

4.Menaga

5.Manjula

6.Ganesan

7.Vanniappan

.. Respondents 1 to 7/Respondents/Defendants

PRAYER: Civil Revision is filed under Article 227 of the Constitution of India, against the ex-order and fair order, dated 24.07.2015 in I.A.No.115 of 2015 in O.S.No.88 of 2013, on the file of the learned Additional District Munsif-cum-Judicial Magistrate Court, Manamadurai and praying to set aside the same.

For Petitioners : Mr.V.Nagendran

For Respondents : Mr.K.Gokul (for R1 to R7)

ORDER

The instant Civil Revision Petition is preferred by the petitioners, as against the order dated 24.07.2015 passed in I.A.No.115 of 2015 in O.S.No.88 of 2013 on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai, Sivagangai District.

2.Aggrieved over dismissal of their application seeking for an amendment of plaint scheduled properties, the revision petitioners are before this Court assailing the said order.

3.The revision petitioners / plaintiffs have filed the above suit in O.S.No.88 of 2013 on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai for the relief of declaration, permanent injunction and to declare the sale deeds



in document Nos.172/99, 285/99 and 2308/99 on the file of the Sub-Registrar, Thirupuvanam, as null and void.

4. According to the revision petitioners, the suit properties were purchased by the 1st petitioner's husband and the father of the petitioners 2 to 4 namely Aadhimoolam. The said properties were self acquired properties of said Aadhimoolam and till his life time, it was under the possession of said Aadhimoolam and thereafter his demise, the properties devolved upon the revision petitioners and they are in peaceful possession of the properties. Though during the life time of Aadhimoolam, a General Power Deed came to be executed in the name of the 1st respondent by the said Aadhimoolam and later came to be cancelled, the respondents herein lawlessly executed several sale deeds by playing fraud by concealing the cancellation of General Power Deed and thereby they encumbered the suit properties. Therefore the above suit came to be filed as against the respondents herein for the reliefs stated supra. The respondents filed written Statement denying the case of the plaintiff and they sought for dismissal of the suit.

5. In the said suit on the plaintiffs' side, P.W.1 stood examined and on the defendants' side, 1st defendant namely Rameela was chief examined as D.W.1 and the suit was posted for cross examination of D.W.1.

6. In the said circumstances, the revision petitioners came up with an application under Order 6, Rule 17 and 18 of CPC, seeking for an amendment over the extent of the suit property. It is the case of the revision petitioners, that in para 4 of the plaint an extent of 2 acres remain erroneously mentioned as situated in northern side and in the Description of Plaint suit property, an extent of 1 acre 34 cent is erroneously stated to be situated in the southern side.

7. Both the mistakes are due to inadvertence, oversight and due to typographical error and the same are required to be struck down. Therefore the revision petitioners filed the above Interlocutory Application in I.A.No.115 of 2015 for the relief of amendment as stated above. However, the Learned trial Judge on misconception of law and facts has dismissed the revision petitioners' application vide the impugned order dated 24.07.2015. Challenge is made to the said order by the revision petitioners in this civil revision.

8. I heard Mr.V.Nagendran, learned counsel for the revision petitioners and Mr.K.Gokul, learned counsel for the respondents and perused the entire materials available on records.

9. The learned counsel for the revision petitioners would submit that the erroneous mentioning of suit property in para 4 and the description column of the plaint are due to inadvertence and oversight and the same is neither willful nor wanton. In fact those mistakes came to the knowledge of the plaintiffs, only during the cross examination of P.W.1, whereby P.W.1 precisely found and



instantaneously stated that the description of the property is mistakenly stated. Thereupon the revision petitioners filed the above interlocutory application in I.A No.115 of 2015, seeking for an amendment by way of striking down a piece of property from the suit properties.

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10.The amendment sought by the revision petitioners is bonafide and the same do not alter the nature of the suit. However the Learned trial Judge by taking a rigid view that post trial amendments are impermissible, erroneously dismissed the revision petitioners application for amendment and the same is liable to be interfered by this Court.

11.Per contra, the Learned Counsel for the respondents would submit that the amendment sought for by the revision petitioners is a post trial amendment and the same is sought belatedly, when the suit is posted for cross examination of D.W.1. Such application is highly belated and is liable to be rejected. Only on due application of such fact, the revision petitioners' application was rightly rejected by the Learned trial Judge and the same do not warrant any interference in the Civil Revision Petition.

12.Admittedly the amendment sought for is a post trial amendment and can neither be allowed as a matter of right, as a matter routine.

13.On careful perusal of the case records it is seen that the revision petitioners seek for removal of an extent in the suit scheduled property. Nothing more is sought to be amended in the plaint.

14.In case of post trial amendments it has to be seen that admissions or averments made adverse to oneself is not withdrawn by way of amendment. It is to be further ensured that the amendment sought does not change the character, nature of the suit and is not made to introduce a new cause of action. Yet other principles to ensure are that the amendment does not prejudice the other side and it does not defeat the law of limitation.

15.As per Order 6, Rule 17 of CPC, an application for amendment could be made at any stage of proceedings however the proviso provides that in spite of due diligence the party would not have raised the issue before the commencement of trial.

16.In the case on hand it is seen that the 1st revision petitioner, the P.W. 1 during his cross examination has stated that the extent of the suit properties are mistakenly stated. Therefore, this Court finds that the amendment application on hand is neither an afterthought nor was intended to prolong the case.

17.It is settled law that to avoid multiplicity of proceedings, the amendment applications on hand can be allowed by <https://hccasescourts.gov.in/services/> do not affect the nature, character of the suit and was not for introduction of new cause of action.



18. In so far as the case on hand, on consideration of the scope of amendment sought is to remove some extent of the suit property, this Court finds that such amendment do not alter the nature, character of the suit.

19. In other words the same would amount to restrict the plaintiffs' prayer to a smaller extent of land, than that of originally claimed.

20. In this regard, it would be relevant to look into some of the decisions of this Court as follows:

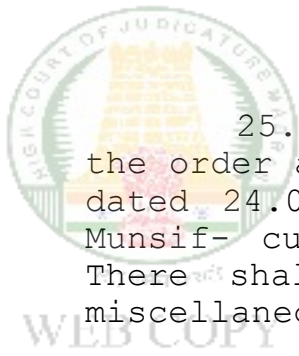
- M.Kulasekaran and other vs M.Dhanapathy reported in 2017-4-L.W.382 - Amendment to correct Survey Numbers and boundaries will not affect the character of the suit or would amount to introduction of a new cause of action.
- Kandasamy & Others Vs Thiagarajan & others reported in 2015-5-L.W.783- Amendment to correct Survey Numbers and boundaries will not affect the character of the suit or would amount to introduction of a new cause of action and a post trial amendment can be allowed if out of due diligence the plaintiff is not in a position to seek the amendment prior to commencing of trial .

21. The above decisions emphasize that in the interest of justice post trial amendments are permissible, if it fulfills the criteria of due diligence and the same do not alter the nature or character of the suit. Further the above cited decisions would also emphasize that the amendment of Survey numbers or boundaries or extents in the suit properties, do not alter or affect the nature of the suit. This Court also finds that the scope of amendment sought for by the revision petitioners do not prejudice the respondents and it does not defeat the law of limitation.

22. Therefore, this Court in the view of the nature of the amendment sought for by the revision petitioners and in the light of the above decisions is of the opinion that the amendment is liable to be allowed in the interest of justice and to avoid multiplicity of proceedings besides enabling the trial Court to render complete adjudication over the rights of the parties.

23. However, it is seen that the amendment application is made not on time, in view of the same, this Court deems fit to allow the application on payment of cost of Rs.14,000/- to the respondents, such that Rs.2,000/- to be paid towards each respondent. The said cost is directed to be paid within a period of two weeks from the date of receipt of this order copy, failing which the Civil Revision Petition shall stand dismissed automatically without any further reference to this Court.

24. On payment of cost indicated above, the trial Court is directed as to see the amendments are carried out in adherence with Order 6, Rule 18 of CPC.



25. In the result, this Civil Revision Petition is allowed and the order and decree made in I.A.No.115 of 2015 in O.S.No.88 of 2013 dated 24.07.2015 on the file of the learned Additional District Munsif- cum-Judicial Magistrate, Manamadurai is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif-
cum-Judicial Magistrate,
Manamadurai.

+1cc to Mr.V.Nagendran, Advocate, SR.No.69923.

order made in
C.R.P. (MD) (PD) No.2390 of 2015
and
M.P. (MD) No.1 of 2015
27.06.2018

vsv

RAM/VR/SAR 2/06.07.2018/5P/3C