



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.06.2018

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

C.R.P. (MD) (NPD) No.259 of 2015

and

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

The Members of Hindu Sambavar Samuthayam
Chantaivazhi, Puliyoorkurichy,
Kalkulam Village, Thuckalay,
Kanyakumari District
Represented by its President

.. Petitioner

vs

1.V.Ananthakrishnan
2.A.Chenthilkumar
3.A.Jeyabalan
4.M.Jegadeesh

.. Respondents

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 30.10.2014 passed in I.A.No.58 of 2014 in O.S.No.341 of 2012, on the file of the learned Subordinate Court (Camp Court), Padmanabhapuram.

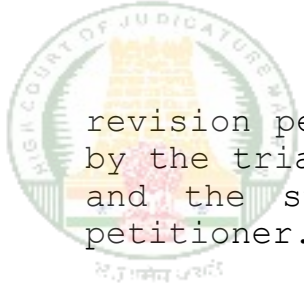
For Petitioner : Mr.C.Kishore

For Respondents : Mr.K.N.Thampi (for R1 to R3)
No Appearance (for R4)

ORDER

The petitioner has filed this Civil Revision Petition seeking to set aside the order dated 30.10.2014 made in I.A.No.58 of 2014 in O.S.No.341 of 2012 on the file of the learned Subordinate Judge (Camp Court), Padmanabhapuram.

2.Aggrieved over dismissal of his application to amend the plaint, the plaintiff / revision petitioner is before this Court in the present civil revision is the case of the Revision petitioner that he filed the above suit in O.S.No.341 of 2012 for the relief of declaration and injunction. In the said suit the respondent/defendant filed written statement agitating the claim of the



revision petitioner as false and unsustainable. Issues were framed by the trial Court and the Revision petitioner was examined in chief and the suit was posted for cross examination of the revision petitioner.

3. It is the case of Revision petitioner that the subject suit property belongs to their Sambavar community and it was purchased by their community people from one Aandi and Golapan. The suit property was purchased along with a temple structure situated therein for their village deity A/M Sudalaimadan. Thereupon the temple was under the control of their community people and every year there will be the celebrations for their village deity A/M Sudalaimadan. Originally the management of the temple was conducted by a board constituted by their community people. The petitioner is the president of the above board. Pertaining to the administrative and accounts maintenance of the temple there arose a dispute and the respondents who also belong to the same community, were removed from the role of their community persons, for having acted against the interest of the temple. Whereupon the respondents proclaimed as if the suit property and the above temple situated therein were exclusively their family properties. Therefore the above suit for declaration and permanent injunction came to be filed by the revision petitioner.

4. The said suit was resisted by the respondents contenting that the suit property is their exclusive property and the plaintiff have neither title nor right nor any interest over the temple or over the suit properties and thereby prayed for dismissal of the suit. The president of the revision petitioner namely Mani Kumar examined as PW1 and the suit was posted for his cross examination. In such situation the revision petitioner filed an Interlocutory Application in I.A.No.58 of 2014 seeking for amendment of the plaint. The nature of amendment is that due to inadvertence and urgency in filing of the suit, the properties were erroneously mentioned as belonging to one "Andi", whereas one Mr. Sreenivasayyan was the previous owner alienated the said property to one Mr. Kunjumadan, S/o. Pitchai the then president of the plaintiff Samuthayam. That apart the revision petitioner also sought to amend the cause of action. However, the learned trial Judge on misconception of law and facts dismissed the revision petitioner's application. Aggrieved over the same the present Civil Revision Petition is filed.

5. I heard Mr. C. Kishore, learned counsel for the revision petitioner and Mr. K. N. Thampi, learned counsel for the respondents 1 to 3 and perused the entire material available on records. No representation on behalf of the 4th respondent.

6. The learned counsel for the revision petitioner would submit that it is indispensable to amend the plaint as prayed above since the suit owing to the need of urgency was filed by pleading the cause of action in para-3 of the plaint and that the earlier



owner of the plaint scheduled property had been mistakenly stated as one Aandi and Kolappan. Only due to the mistake crept in the original title deeds of the plaint suit scheduled property a remained untraceable at the time of filing the suit since the said title deeds are very old and ancient.

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7.The details of the original title deeds were traced only after the commencement of trial and receipt of the certified copy of sale deed obtained on 31.07.2014. The above amendment is thus necessary for complete adjudication of the issue involved in the suit. However, the learned judge on erroneous approach that the amendment sought will affect the nature, character of the suit and the same would serve as an introductory tool of new set of facts invalidating the earlier pleadings has erroneously dismissed the revision petitioner's application and the same is liable to be interfered by this Court.

8.Per contra, the learned counsel for the respondents 1 to 3 would submit that the above interlocutory application of the revision petition is liable to be dismissed inlimine since being filed at belated stage intended only for the introduction of new set of facts. Only on the appreciation of the above fact the learned trial judge was pleased to dismiss the revision petitioner's application and the same does not require any interference.

9.On perusal of records this Court finds that the above application is filed seeking for a post trial amendment. It is seen that the plaint is filed on 21.12.2012 and the written statement was filed in February 2013, for which a reply statement was also filed by the revision petitioner on 07.03.2013. The issues were framed by the trial Court on 06.11.2013 and P.W 1 was chief examined on 18.07.2013. It is further seen vide affidavit filed under Order 18, Rule 4 of C.P.C. of the revision petitioner, the revision petitioner categorically contends that the above suit property and the temple therein was pre owned by one Aandi and Kolappan. The said property was gifted to the petitioner's community and festivals were conducted by their community.

10.On perusal of the written statement it is seen that it is the case of the respondents that the property originally belongs to the said Aandi and after his demise it was inherited by his legal heirs. The 1st respondent is one such legal heir of Aandi. Thus the temple and subject property is their exclusive family property.

11.On perusal of above pleadings of either side would reveal that the case of the respondents as well as the revision petitioner at the time of filing the suit is that the suit property belonged to one Aandi. However now taking "U" turn, the Revision petitioner contends that the property of the land owners were erroneously stated as belonging to "Aandi" and Kolappan. Revision petitioner requires amendment of his plaint stating that the property belongs to one Sreenivasayyan, S/o.Hari Karan. Further, the revision



petitioner also require recasting of para No.10 of the plaint such that to alter and amend the new cause of action.

12. It is further seen from affidavit filed under Order 18, Rule 4 of C.P.C. of the revision petitioner under Chief Examination, the revision petitioner categorically contends that the above suit property and the temple therein was pre owned by one Aandi and Kolappan. Admittedly the amendment sought is a Post Trial amendment and the same in any way cannot be allowed as routine or as a matter of right. In the case on hand it is seen that the case of the plaintiff all along till his chief examination is that one "Andi" is their predecessor in title of the suit property. But now the revision petitioner is proposed to introduce a new case by way of amendment as to his tracing of title.

13. In this regard it would be useful to refer to the decision of *Vidyabai & Ors. Vs Padmalatha & another* reported in 2009 (2) SCC 409, the Hon'ble Supreme Court held that unless otherwise plaintiff is able to substantiate that in spite of due diligence he is unable to raise such matter before the commencement of Trial, Post Trial amendments cannot be allowed.

14. However in the case on hand even the question of diligence will have no application, since the amendment is sought for to introduce a new plea by invalidating the earlier pleadings, which in the opinion of this Court would withdraw earlier admissions which would be adverse in the course of Trial.

15. In this regard it would be useful to look into one of my decisions made in the matter of *P.Chinnaraj Vs K.Govindasamy* reported in 2017 (1) MWN (Civil) 342 (Mad) holding as following that

"20. In a case in *UCO Bank v. Nest Tours Travels (P) Ltd.*, 2009 (3) CTC 522, this Court held as follows:

Adding, altering or substituting a new cause of action in the plaint may be objectionable.

21. It is also held in another case by this Court in *V.N.Surulivel Nadar v. Central Bank of India*, 1997 (3) CTC 119 as follows:

The amendment of pleadings can be allowed at any time, provided that such amendment does not change the original cause of action or case of the plaintiff and is not barred by limitation.

22. All the above Judgments will clearly says that no amendment could be allowed when the amendment sought for is either to change of cause of action or change of case of the plaintiff. Therefore, the above Judgments are squarely applicable to the case of the respondent. Therefore, it is my considered opinion is that no amendment should be permitted if the amendment sought for is either change of



cause of action or change of facts.

23. Though the suit was filed in the year 2012 and after numbering the suit at the time of admission an ex parte order by appointing the Advocate Commissioner was ordered, pursuant to the appointment of Advocate Commissioner, the Advocate Commissioner has inspected the suit schedule of property only on 09.10.2012. Therefore as per the Advocate Commissioner report, the Commissioner stated that before two days only the defendant has destroyed the cart track from the date of his inspection. That means the destroying cart track only was made by the defendant after the filing of the suit. Therefore, the amendment sought for the plaintiff is that to amend the cause of action that the defendant as destroyed the cart track which was made only pursuant to the report filed by the Advocate Commissioner. Therefore, it is made clear that this is a new cause of action and new facts introduced by the plaintiff based on the Advocate Commissioner's report. Therefore, that should not be permitted and the plaintiff have no right to amend the new cause of action or introducing new facts in the plaint. Therefore, the order passed by the learned Judge in I.A.No.355 of 2013 for dismissing the I.A. petition is perfectly valid."

16. Thus in view of the forgoing reasons stated supra, this Court finds no infirmity or irregularity over the order of the learned Trial Judge of disallowing the amendment sought for by the plaintiff.

17. In the result, this Civil Revision Petition fails and hence the same is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Subordinate Judge (Camp Court),
Padmanabhapuram.

+ 1 CC TO Mr.C.KISHORE, ADVOCATE IN SR No. 69451
+ 1 CC TO Mr.K.N.THAMPI, ADVOCATE IN SR No. 69480

VSV

TE/RP/SAR-1 : 01/08/2018 : 5P/4C

order made in
C.R.P. (MD) (NPD) No.259 of 2015 and
M.P. (MD) No.1 of 2015
22.06.2018