



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (PD) (MD) No.316 of 2015
and M.P. (MD) No.1 of 2015

- | | |
|---------------------|---|
| 1. Kamatchi Ammal | ... 1 st Petitioner/1 st Petitioner/
1 st Plaintiff |
| 2. Vadamalai | ... 2 nd Petitioner/2 nd Petitioner/
2 nd Plaintiff |
| 3. M.Rajamani Ammal | ... 3 rd Petitioner/3 rd Petitioner/
3 rd Plaintiff |

-Vs-

- | | |
|-------------------|---|
| 1. Sivakami Ammal | ... 1 st Respondent /1 st Respondent /
1 st Defendant |
| 2. Karmega Raja | ... 2 nd Respondent /2 nd Respondent /
2 nd Defendant |

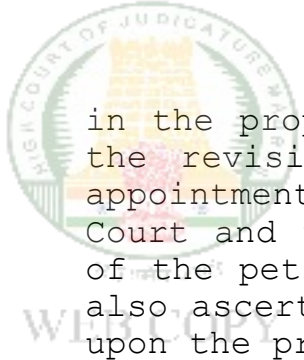
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for records and set aside the order of dismissal dated 08.01.2015 in I.A.No.718 of 2013 in O.S.No.445 of 2004 by the learned District Munsif, Nilakottai and allow the same .

For Petitioner	: Mr.T.R.Jeyapalam
For R1	: Mr.N.S.Karthikeyan
For R2	: No Appearance

ORDER

The revision petitioners are the plaintiffs in O.S.No.445 of 2004 on the file of the learned District Munsif, Nilakottai and in the suit, the revision petitioners/plaintiffs sought for permanent injunction. During pendency of the suit, the petitioners/plaintiffs have filed an application in I.A.No.718 of 2013 seeking to carry out certain facts in the plaint by way of amendment and the said application was dismissed by the Trial Court, stating inter alia that the amendment was sought to drag on the proceedings, which is not permissible under law. Challenging the said order, the petitioners are before this Court.

2. It is the case of the revision petitioners that the suit schedule property was an ancestral property and the 2nd and 3rd petitioners are the brother and mother of the 1st petitioner respectively and the 2nd defendant is also his brother, who did not support the case of the revision petitioners and therefore, he was added as the 2nd defendant in the suit. Since the petitioners and his brother were not in the native place, the 1st defendant / 1st respondent herein was maintaining the suit schedule property and thereafter, attempted to usurp the same by constructing a building



in the property without their knowledge. It is the further case of the revision petitioners that they had filed an application for appointment of an Advocate Commissioner, which was allowed by this Court and the report was also filed. In the report, the properties of the petitioners and the 1st defendant were segregated and it was also ascertained in the report that the 1st defendant had encroached upon the property of the petitioners.

3. The revision petitioners states that in order to amend the measurement in the plaint on the basis of the report of the Advocate Commissioner, they had filed an application for carrying out corrections in the plaint. Further, the encroached portion of the building was rented out illegally for a sum of Rs.1000/- per month by the 1st defendant and the amount collected had to be refunded to the petitioners.

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



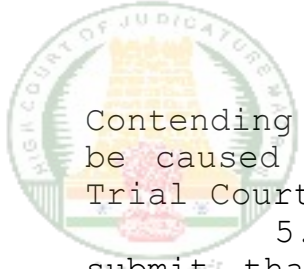
and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in culcating the period of prescriptive title claimed to have been earned by the defendant. The interest 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."



Contending that if the petition is not allowed, much prejudice would be caused to the petitioners, it is prayed that the order of the Trial Court is liable to be set aside.

5. Per contra, learned counsel for the 1st respondent would submit that the revision petitioners, having failed to seek the relief of mesne profit at the time of institution of suit, have filed the present application to cover up their mistake by way of seeking amendment. There is no difference in the report with regard to description of the property and therefore, there is no need to amend the plaint based on the report of the Advocate Commissioner. He would further submit that the application filed was a vexatious one and allowing the amendment petition would cause irreparable loss to her and therefore, this petition is liable to be dismissed.

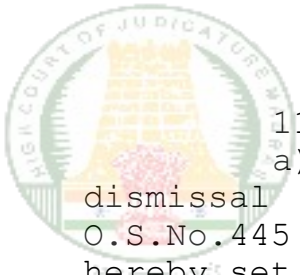
6. Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent. There is no representation on behalf of the 2nd respondent. This Court also perused the material documents available on record.

7. It is not in dispute that the plaintiffs had sought for permanent injunction in the suit and now seek to amend the suit by incorporating the details, such as measurement, boundary, etc., of the suit schedule property, on the basis of the report filed by the Advocate Commissioner. It is contended by the petitioners that since they were not aware of those details at the inception, they were not found mentioned in the plaint 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 added is the exact description of the property in the schedule. 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. The defendants have taken the plea of delay in filing the petition for amendment and it is settled that the question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone, but by reference to the stage to which the hearing in the suit has proceeded.

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.



11. In the result,

a) this civil revision petition is allowed and the order of dismissal dated 08.01.2015 passed in I.A.No.718 of 2013 in O.S.No.445 of 2004 by the learned District Munsif, Nilakottai, is hereby set aside;

WEB COPY

b) the revision petitioners / plaintiffs are permitted to carry out necessary amendment in the plaint to the extent sought by them, within a period of two weeks from the date of receipt of a copy of this order;

c) the Trial Court, after amendment, shall permit the respondents/defendants to file their objections by way of additional written statement for the amended plaint within a period of two weeks thereafter;

d) the Trial Court is further directed to dispose of the suit within a period of two months from the date of filing of additional written statement to the amended plaint, 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.

e) after passing judgment and decree in the suit, the learned District Munsif, Nilakottai is directed to send a report to this Court to that effect.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

1. The District Munsif, Nilakottai.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

COPY TO:

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.T.R.Jeyapalam, Advocate SR.No. 70092

+1cc to M/S.N.S.Karthikeyan, Advocate SR.No. 70067

C.R.P.(PD)(MD) No.316 of 2015
27.06.2018