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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 10.04.2018
DELIVERED ON : 09.11.2018
CORAM

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

C.R.P. (MD) (PD) No.935 of 2015
and
M.P.(MD)No.1 of 2015

1.Subbulakshmi
2.Petchiraj

.. Petitioners

vs

1.Selvanayagam @ Selvaraj
2.Arumugam

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 27.10.2014 made in I.A.No.607 of 2014 in O.S.No.545 of 2010 on the file of the Additional District Munsif Court, Tuticorin.

For Petitioners : Mr.D.Senthil
For Respondents : Mr.S.Muthal Raj

ORDER

This revision is directed against the order of the learned Additional District Munsif, Tuticorin dated 27.10.2014 made in I.A.No.607 of 2014 in O.S.No.545 of 2010, dismissing the petition filed by the petitioners under Order 6, Rule 17 of CPC.

2. The petitioners are plaintiffs and the respondents are defendants in the suit. The petitioners have filed the suit for permanent injunction restraining the respondents, their men, agents, servants, etc. from interfering in the petitioners' peaceful possession and enjoyment of the suit property. Resisting the suit, the respondents have filed the written statement.

3. Pending suit, the petitioners have filed I.A.No.607 of 2014 seeking to amend the plaint schedule alleging that at the time of filing the suit, due to typographical mistake in the plaint schedule it has been mentioned as 68 cents instead 17 cents. The said mistake has been noticed by the petitioners now only when they were preparing for the trial. Hence, it is prayed that the plaint schedule line 3 has to be amended suitably as 17 cents instead 68 cents.

4. Resisting the petition, the respondents have filed the counter stating that when the suit was listed on 12.04.2012, the petitioners have not appeared before the Court and the suit was



dismissed for default. Thereafter, the petitioners have filed petition for restoration of the suit with delay condonation of 150 days and the delay was condoned by the Court. Thereafter, pursuant to the order passed in I.A.No.1799 of 2013, the suit was restored and the suit was listed for trial on 10.02.2014. It was not correct to state that now only the petitioners came to know the typographical mistake in the schedule of property. When the petitioners have stated that they were in possession of 68 cents, now all of a sudden they cannot say that they were in possession of 17 cents, which will alter the character of the suit. There was not bona fide in the petition and prayed for dismissal of the same.

5. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the petitioners have filed the present revision.

6. I heard Mr.D.Senthil, learned counsel for the petitioners and Mr.S.Muthal Raj, learned counsel for the respondents and also perused the materials available on record.

7. Assailing the order of the trial Court, the learned counsel for the petitioners submitted that without following the procedure laid down in the Code of Civil Procedure, the trial Court dismissed the petition. In order to rectify the typographical error in the schedule property, the petitioners have filed the petition and no valid reason was given by the trial Court in dismissing the petition filed by the petitioners. Since the petitioners have filed the petition to rectify the typographical mistake in the plaint schedule, the trial Court ought to have allowed the petition.

8. Per contra, the learned counsel for the respondents submitted that in order to protract the trial, the petitioners have filed the amendment petition. Since the petitioners have pleaded that they were in possession of 68 cents, now they cannot reduce the extent of the suit property which would alter the very nature of the suit. He would further submit that the trial Court was right in dismissing the petition and therefore, there is no need to interfere with the same.

9. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioners.

10. The grievance of the petitioners is that due to typographical mistake in the schedule of property instead of mentioning 17 cents, it has been stated 68 cents. When the petitioners were preparing for trial, they came to know the said mistake and therefore, prayed that the said mistake has to be corrected by way of amendment.

11. On the other hand, it is the say of the respondents that the suit is of the year 2010 and earlier, the petitioners allowed



the suit for dismissal and thereafter, it was restored with a delay of 150 days. Only to protract the trial, the petitioners have filed the petition and if the amendment is allowed, the very nature of the suit would be altered.

12. As stated supra, the petitioners have filed the suit for permanent injunction for 68 cents against the respondents with specific cause of action that the respondents were trying to interfere with the peaceful possession and enjoyment of the suit property from 2010 October by giving false complaint and specifically on 08.12.2010, the respondents were trying to interfere with the possession and enjoyment of the the suit property.

13. In plaint para 3, the petitioners averred as under:
"17 cents out of the total 68 cents of the under mentioned schedule property originally belonged to 1st plaintiff's father Rengasamy Naicker. After the death of the said Rengasamy Naicker his wife and mother of the 1st plaintiff Arumugathammal settled the said property and other properties to and in favour of her daughters namely 1st plaintiff and Subbammal vide 2 registered settlement deeds on 13.05.1951 and had handed over the settled properties to the settlees. The settlees also accepted this respective settlement deeds and had acted upon and have been in possession and enjoyment of the settled properties including the said 17 cents. The remaining 51 cents in the under mentioned schedule property belonged to Rengasamy Naicker brother Subba Naicker. The said Subba Naicker died issueless. Hence, the said property devolved on 1st plaintiff and Subbammal as 2nd class legal heir of Subba Naicker. Thus entire under mentioned belonged to 1st plaintiff and Subbammal and they have been in possession and enjoyment of the schedule property."

In para 5, it has been further averred as under:

"5.1st plaintiff's sister Subbammal died leaving behind her sons namely the 2nd plaintiff and Perumalsamy as her legal heirs. The said Perumalsay died leaving behind his two daughter, who are residing at Chennai. 2nd plaintiff alone is managing the under mentioned schedule property, along with the 1st plaintiff. Defendants are trying to interfere in to the plaintiffs peaceful possession and enjoyment of the schedule property from 2010 October by giving false police complaint. In the said police enquiry the police came to the conclusion that defendants complaint was false, and hence advised them and sent them away."

13. Thus, from the plaint averments, it is clear that the petitioners have stated that they were in possession of 68 cents. In fact, the plaint averments stated that the 1st plaintiff and her sister Subbammal obtained patta for the suit property in their name, which means that they were claiming to be in possession of the



68 cents. However, all of a sudden, the petitioners have filed the petition seeking amendment of the schedule property that instead of mentioning 17 cents, it has been wrongly mentioned in the schedule of property as 68 cents.

14. Order 6, Rule 17 of C.P.C. reads as under:

"Amendment of pleadings: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

15. Catena of decisions would say that even after commencement of trial, if the Court deems fit and necessary to permit amendment of the pleadings, if it will not prejudice to the defendants and the relief sought is not barred by limitation.

16. In *Surender Kumar Sharma V. Makhan Singh*, reported in (2009) 10 SCC 626, the Hon'ble Supreme Court had an occasion to consider belated plea for amending the plaint and whether prayer for amendment of plaint allowed will change the nature and character of the suit. In the said case, the Apex Court has held under:

"As noted herein earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e., the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment."



17. It is trite that pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. Generally, it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. The question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down.

18. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

19. In the case hand, though the trial has not commenced, if the proposed amendment is allowed, the nature and character of the suit would be altered, as the plaint averments contain rights of the petitioners for 68 cents. More over, by the proposed amendment, petitioners are introducing a new case.

20. When the plaint averments were specific for 68 cents, the petitioners cannot change their mind and suddenly filed a petition seeking to amend the plaint schedule for 17 cents that too the respondents have filed their detailed written statement, wherein they have denied the title of the petitioners.

21. No sufficient cause was shown by the petitioners for filing the petition for amendment after a prolonged period of four years. As rightly held by the trial Court, the mistake crept was not a typographical mistake.

22. It is pertinent to note that the trial has not commenced in this suit. However, if the amendment of the suit schedule is ordered, the very nature of the suit would be altered as the plaint averments specifically deal with 68 cents. The petitioners have not sought amendment of plaint averments and they only sought amendment of plaint schedule alone. Further, the petitioners have given boundaries for total 68 cents.

23. In such view of the matter, this Court finds that there is no illegality and/or perversity in the order of the trial Court and the revision is liable to be dismissed.

24. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is made clear that it is open to the trial Court to decide the suit on merits and in accordance with law uninfluenced by the order



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of this Court. Since the suit is of the year 2010 and the petitioners are senior citizens, the trial Court is directed to dispose of the suit as expeditiously as possible.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Additional District Munsif,
Tuticorin.

C.R.P. (MD) (PD) No.935 of 2015

and

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

09.11.2018

VSV

ES/PM/SAR 3/19.12.2018/6P/2C