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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.01.2018

DELIVERED ON : 09.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2471 of 2017

and

C.M.P. (MD) No.11699 of 2017

G.Ramdoss : Petitioner/Petitioner/Plaintiff

vs.

1.Shanthi

2.K.Muraliganesh

3.Periyasamy

4.John Peter

5.Ravindran @ Kuttairavi

6.Rajasekaran

7.Mayamperumal

8.The Sub-Registrar,
Vadipatti Sub-Registrar Office,
Vadipatti,
Madurai District.

: Respondents/Respondents/Defendants

[R.3, R.4 & R.8 are set ex-parte before
the trial Court]

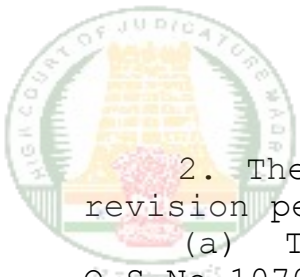
PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.10.2017 passed by the learned Principal Subordinate Judge, Madurai made in I.A.No.55 of 2017 in O.S.No.1070 of 2012.

For Petitioner : Mr.S.Prasanth

For 1st respondent : Mr.D.Gandhiraj

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order passed by the learned Principal Subordinate Judge, Madurai in I.A.No.55 of 2017 in O.S.No.1070 of 2012 dated 09.10.2017.



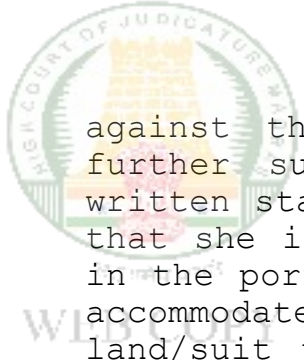
2. The brief facts, which are necessary to decide the present revision petition, are as follows:

(a) The petitioner herein, as plaintiff, has filed the suit in O.S.No.1070 of 2012 on the file of the Principal Subordinate Court, Madurai, for declaration that the impugned documents, dated 22.03.2010 & 09.04.2010 are null and void, and for permanent injunction. According to the petitioner/plaintiff, he was in possession and enjoyment of the suit property and the 3rd respondent / 3rd defendant have forcibly obtained his signature in the impugned power deed, dated 22.03.2010, in favour of the 2nd respondent / 2nd defendant, who, in turn, hurriedly executed a sale deed, dated 09.04.2010 in favour of the 1st respondent/ 1st defendant. According to the petitioner / plaintiff, on knowing the execution of the above sale deed, he immediately lodged a criminal complaint on the file of the Vadipatti Police Station and the same was registered in Crime No.248 of 2012 and subsequently, transferred to the file of District Crime Branch, Madurai and then, immediately filed the suit.

(b) It is the case of the petitioner that due to family circumstances, he went to Coimbatore and stayed there, and he had not looked after the suit property. When he returned back in the year 2017, he came to know that the suit property was encroached and a building was also constructed by the 1st respondent / 1st defendant, using the long absence of the petitioner. Therefore, the petitioner / plaintiff has filed an interlocutory application in I.A.No.55 of 2017, seeking to add the reliefs of "mandatory injunction" and "recovery of possession" in the plaint. But, the trial Court has dismissed the same and aggrieved by the same, the present revision came to be filed by the petitioner / plaintiff.

3. The learned Counsel for the petitioner would submit that the petitioner came to know about the encroachment made by the 1st respondent / 1st defendant only on 13.01.2017 and hence, he sought to add the reliefs of "mandatory injunction" and "recovery of possession" in the plaint and the same will not change the basic structure of the suit. He would further submit that if the suit got decreed in his favour, then he will have to file another suit for the said consequential reliefs. In order to avoid multiplicity of proceedings, he has filed the present interlocutory application to amend the plaint under Order 6 Rule 17 CPC, even before the trial got commenced. He would further add that while considering the application for amendment, the Court should not get into the correctness or falsity of the case in the amendment and should not record a finding thereon. But the trial Court, without considering the above settled position, has erroneously dismissed the said interlocutory application. Thus, he prays to set aside the impugned order and to allow the interlocutory application.

4. Per contra, the learned Counsel appearing for the 1st respondent / 1st defendant stoutly refuted the allegations levelled

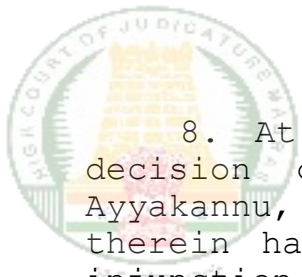


against the defendants by the petitioner / plaintiff. He would further submit that the 1st respondent / 1st defendant, in her written statement filed in the year 2013 itself, has clearly stated that she is doing agricultural operations in the suit property and in the portion of the suit property, she made some construction to accommodate the workers employed by her in the said agriculture land/suit property. Knowing fully well about the said fact, the petitioner has purposefully and belatedly filed the said interlocutory application nearly after four years. If the said interlocutory application is allowed, then the nature of the suit itself will be changed. Considering the same, the trial Court has rightly dismissed the said petition. Thus, he prays for dismissal of the present civil revision petition.

5. Heard the learned Counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent / 1st defendant and perused the materials available on record.

6. It is seen from the record that the first respondent / first defendant has stated in the written statement filed in the year 2013 itself that she has been in possession and enjoyment of the suit property by doing agricultural work and putting up a small house for the employees in the suit property. But, nearly after four years, the petitioner / plaintiff has filed the said interlocutory application seeking to add the consequential reliefs of "mandatory injunction" and "recovery of possession" in the plaint stating that he came to know about the encroachment only on 13.01.2017. Admittedly, the petitioner / plaintiff has sought to add only consequential reliefs. The relief of recovery of possession is not barred by limitation and as per Article 65 of the Limitation Act, the time for filing the suit for recovery of possession is 12 years. More over, the merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment.

7. It is true that the petitioner / plaintiff ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so, when the 1st defendant pointed out about her possession in the written statement itself. However, even before the commencement of the trial, the petitioner / plaintiff has filed the said amendment petition. Order 6 Rule 17 C.P.C. also confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Hence, I am of the view that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and refusal to permit the amendment would create needless complications at the stage of the execution, in the event of the petitioner / plaintiff succeeding in the suit and would lead to multiplicity of proceedings.



8. At this juncture, this Court is inclined to refer to a decision of the Hon'ble Supreme Court in Sampath Kumar Vs. Ayyakannu, reported in 2008 (2) LW 887, wherein the plaintiff therein had sought to convert the suit for permanent prohibitory injunction into a suit for "declaration of title" and consequential "delivery of possession" by way of amendment, that too after 11 years, but before the commencement of trial. When the similar grounds were arisen for consideration, the Hon'ble Supreme Court has held in paragraph Nos.6 to 13 as follows:

"6. It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

8. In Rukhmabai v. Lala Laxminarayan and Ors., AIR (1960) 335, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. 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. 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. In former case 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. In the latter cases 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. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

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] 8 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



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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 calculating 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."

9. The above decision is squarely applicable to this case, as in this case also the amendment is sought to be made before the commencement of the trial. Further, in this case, it is only consequential reliefs sought to be added in the amendment. As the amendment is sought to be added before the commencement of trial, the delay cannot be a ground for refusing a prayer for amendment and no prejudice will be caused to the defendants.

10. In view of the above, this civil revision petition is allowed and the order impugned in this petition is set aside and the relief sought for in the amendment petition is allowed. The



prayer for "mandatory injunction" and "recovery of possession" shall be deemed to have been made on the date on which the application for amendment was filed. The defendants are permitted to file additional written statement, if need be. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Madurai.

+1CC to Mr.S.Prasanth, Advocate, SR.No. 54040
+1CC to Mr.D.Gandhiraj, Advocate, SR.No. 54222

order made in
C.R.P. (PD) (MD) No.2471 of 2017
and
C.M.P. (MD) No.11699 of 2017
09.03.2018

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AM/KKR/SAR 4/20.03.2018/7P/4C