



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.700 of 2017
and C.M.P. (MD) No.3154 of 2017

1. Kumarasamy
2. Ramanathan
3. Rajarajeswari
4. Rani Gayathiridevi ... Petitioners/Petitioners/Plaintiffs

-vs-

1. Sambath
2. Nagaraj
3. Subburaj
4. Ganesan
5. Kathirvel
6. Vijayakumar ... Respondents/Respondents/Defendants

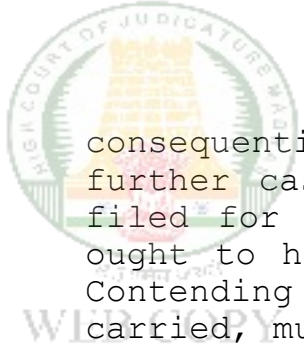
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in I.A.No.771 of 2016 in O.S.No.7 of 2015 on the file of District Munsif, Mudukulathur dated 09.02.2017 and allow this revision.

For Petitioners : Mr.K.Kumaravel
For Respondents : Mr.A.Uthayakumar

O R D E R

The revision petitioners are the plaintiffs in O.S.No.7 of 2015 on the file of District Munsif, Mudukulathur and in the suit, the revision petitioners/plaintiffs sought for declaration, etc. During pendency of the suit, the petitioners/plaintiffs had filed an application in I.A.No.771 of 2016, seeking rectification of certain mistakes in the plaint schedule by way of amendment and the said application was dismissed by the Trial Court, stating *inter alia* that the amendment sought will change the character of the suit, which is not permissible under law. Challenging the said order, the petitioner is before this Court.

2. It is the case of the revision petitioners that when the suit was filed, the plaint schedule property was not surveyed properly and the plaint was filed before the Court of Law on the basis of the statement made by the Advocate. From the report of the Advocate-Commissioner, it came to light that the plaint schedule property is a vacant land and therefore, the relief has to be amended in such a way that the suit was filed for declaration and



consequential injunction with certain other modifications. It is the further case of the petitioners that when the petitioner has been filed for amendment before commencement of trial, the Trial Court ought to have entertained the same by adopting a liberal approach. Contending that unless or otherwise the proposed amendments are carried, much prejudice would be caused to the petitioners and there is no point in moving the present suit as such without carrying out the necessary amendment. Hence, it is prayed that the order of the Trial Court is liable to be set aside and the petition has to be allowed.

3. The revision petitioner, in support of his 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.

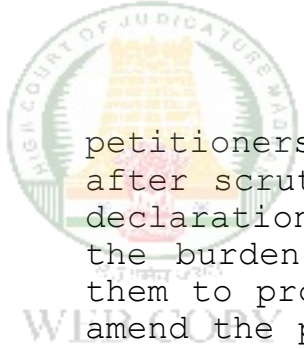
12. On the averments made in the application, the same ought to have been allowed. If the facts alleged by plaintiff are not correct it is open for the defendant to take such plea in the written statement and if the plaintiff fails in substantiating the factual averments and/ or the defendant succeeds 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."

4. Per contra, learned counsel for the respondents/defendants would contend that the plaintiffs, having kept quiet all along, have now awoken from their sleep in seeking for such an amendment. Originally, it was the claim of the



petitioners that the defendants have encroached their property and after scrutiny of the Advocate Commissioner's report, they seek for declaration and consequential injunction. It is further stated that the burden of proof vests with the plaintiffs only and it is for them to prove their case as such. If the petitioners are allowed to amend the plaint, it will certainly alter the character of the suit and therefore, it is pleaded that the petition is liable to be dismissed.

5. Heard the learned counsel on either side and also perused the material documents available on record.

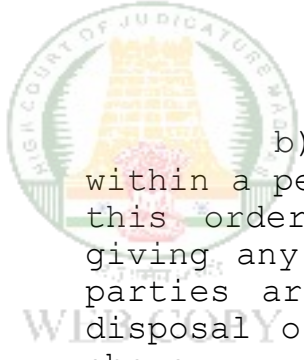
6. It is not in dispute that originally the plaintiffs had sought for declaration, mandatory injunction, etc. In the interregnum period, the plaintiffs seek to amend the suit by changing the prayer from declaration and mandatory injunction to declaration and consequential injunction. It is contended by the petitioners that the fact that the suit property is a vacant land was not known only after perusal of the Advocate Commissioner's report and due to oversight, such mistake has occurred and the proposed amendment will not alter the character of the suit at any cost.

7. It is pertinent to mention here that the suit is pending from 2015 onwards and the contention of the petitioners, that there will not be any alteration of the character of the suit owing to the proposed amendment, is the secondary issue and the primary issue for this Court is to give quietus to the whole issue itself, as already stated above, the suit was filed, seeking the relief of only declaration and permanent injunction. From the order of the Trial Court, it is seen that the Trial Court had rightly observed that the proposed amendment will definitely change the character of the suit and in the event of allowing this petition, what was done all these years has to be once again appraised and the whole exercise has to be redone again, which, in the considered opinion of this Court, is an abuse of process of law and it will further dillydally the matter, instead of giving quietus to the issue.

8. Of course, it is true that as per Order 6 Rule 17 CPC, the pleadings can be allowed to be either altered or amended at any stage of the proceedings, in case such amendments determine the real questions in controversy between the parties. But, in the present case on hand, allowing the amendment will only prolong the issue and therefore, this Court is of the view that the order of the Trial Court is sustainable and needs no interference by this Court.

9. In the result,

a) this civil revision petition is dismissed, confirming the order dated 09.02.2017 passed in I.A.No.771 of 2016 in O.S.No.7 of 2015 by the learned District Munsif, Mudukulathur;



b) the Trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order by conducting the trial on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

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To:

1. The District Munsif,
Mudukulathur.
2. The Record Keeper,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

1CC TO MR. A. UTHAYAKUMAR, ADVOCATE SR 75603

1CC TO MR. K. KUMARAVEL ADVOCATE SR 75290

KK SV SAR 1 /12.10.2018/5P 6C

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