



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2018

CORAM:**THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN**C.R.P. (PD) (MD) Nos.398 and 399 of 2016
and C.M.P. (MD) No.1761 of 2016

Eswari

... Revision Petitioner/Petitioner/
Petitioner/4th defendant (Both CRP's)**-vs-**

S.Rajendran

... Respondent/Respondent/Respondent/
Plaintiff (Both CRP's)

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India praying to set aside fair and decreetal orders passed in I.A.Nos.219 & 220 of 2015 in I.A.Nos.152 & 153 of 2014 in O.S.No.274 of 2010 on the file of District Munsif, Palani dated 18.11.2015.

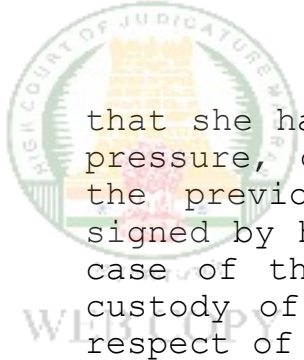
For Petitioner : Mr.M.P.Senthil

For Respondent : No Appearance

COMMON ORDER

The revision petitioner is the 4th defendant in O.S.No.274 of 2010 on the file of District Munsif, Palani and in the suit, the plaintiff / respondent herein sought for recovery of possession, among various other reliefs. During pendency of the suit, the plaintiff had filed an application in I.A.No.641 of 2010 in O.S.No.274 of 2010 for interim injunction and both the interim application and the suit were disposed of in favour of the plaintiff on 09.04.2011 on account of non appearance of the defendants. Aggrieved by the same, the 4th defendant in her individual capacity approached the Trial Court for setting aside the exparte orders by filing two applications in I.A.No.152 of 2014 in O.S.No.274 of 2010 and I.A.No.153 of 2014 in I.A.No.641 of 2010 and both the applications are stated to be pending. In the meanwhile, again the 4th defendant has filed two applications in I.A.Nos.219 & 220 of 2015 in I.A.Nos.152 & 153 of 2014 in O.S.No.274 of 2010, seeking certain modifications in the said applications and those applications were dismissed by the Trial Court, stating *inter alia* that the amendment sought for is different from the character of the applications. Challenging the said orders, the petitioners are before this Court.

2. It is the case of the revision petitioner/4th defendant



that she had filed a counter to the suit, in which, due to the work pressure, certain inadvertent remarks were found stated as against the previous Panchayat President and the counter affidavit was signed by her without going through the contents. It is the further case of the petitioner that since the relevant files were in the custody of the District Collector, no clear details were drawn in respect of the suit, which ended in getting adverse remarks from the Trial Court.

3. The revision petitioner states that any amendment before the pre-trial can be entertained and no prejudice would be caused to other side in that event and the Trial Court, without understanding the settled proposition, had merely held that the proposed amendment will change the character of the suit. Contending that the Trial Court, without considering the factual aspects, has simply dismissed the applications, it is prayed that the orders of the Trial Court needs interference by this Court.

4. The revision petitioner, in support of her 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."

5. Heard the learned counsel for the petitioner and also perused the material documents available on record. There is no representation for the respondent.

WEB COPY 6. It is seen that in the counter filed to the applications filed by the petitioner, it was mistakenly and in stereotypical manner mentioned that since no information was furnished with regard to the case by the previous Panchayat President, she did not file any counter in the suit, when the fact remains that due to work pressure and on account of non availability of files with her, such mistake had crept in. It is contended by the petitioner such amendment is necessary and the proposed amendment will not alter the character of the applications at any cost.

7. 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 changed is the contents in the counter. 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.

8. 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.

9. In view of the foregoing discussions and observations and finding merit in the contention made by the petitioner/4th defendant, this Court is of the view that the orders of the Trial Court are liable to be set aside.

10. In the result,

a) these civil revision petitions are allowed and the orders dated 18.11.2015 passed in I.A.Nos.219 & 220 of 2015 in I.A.Nos.152 & 153 of 2014 in O.S.No.274 of 2010 by the learned District Munsif, Palani, are hereby set aside;

b) the revision petitioner is permitted to carry out necessary amendment in the applications to the extent sought by her and file an amended copy, within a period of two weeks from the date of receipt of a copy of this order;

c) the Trial Court, after necessary amendment, is directed to dispose of the applications within a period of two months from the date of such filing, without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for disposal of the applications within the time stipulated by this Court as above.



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No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To:

The District Munsif,
Palani.

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 71205

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TE/SKN/SAR-2 : 28/09/2018 : 5P/3C

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