

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.4735 of 2013

and M.P.No.1 of 2013

Sundarraaj

..

Petitioner /
Appellant

versus

1.Seethalakshmi
2.Dhanalakshmi
3.Amudha
4.Parameswaran

Respondents /
Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.09.2013 made in I.A.No.41 of 2010 in A.S.No.34 of 2010 on the file of the Sub Court, Dharapuram, Thirupur District.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.Dhalapathy Vignesh Kumar
for Mr.M.Sriram

ORDER

This Civil Revision Petition has been filed challenging the order dated 10.09.2013 passed by the learned Subordinate Judge, Dharapuram, Thirupur District in I.A.No.41 of 2010 in A.S.No.34 of 2010.

2. Brief facts leading to the filing of this Petition;

2.1. The petitioner herein is the plaintiff has filed a suit in O.S.No.30 of 2007 on the file of the learned District Munsif, Kangeyam, Erode District, for the relief of permanent injunction restraining the defendants and their men from in any way interfering with plaintiff's peaceful possession and enjoyment of the suit property. The learned District Munsif, Kangeyam, Erode District, by the Judgment and decree dated 27.10.2010 had dismissed the suit, stating that the plaintiff has not specified the property, for which, he prayed for an injunction. Aggrieved by the same, the petitioner/appellant herein has filed an appeal in A.S.No.34 of 2010 on the file of the learned Subordinate Judge, Dharapuram, Thirupur District. Pending appeal, the petitioner has filed Interim Application in I.A.No.41 of 2010 under Order 6 Rule 17 C.P.C. to amend the plaint. The learned Subordinate Judge, Dharapuram, after affording an opportunity to the respondents, in its order dated 10.09.2013 dismissed the application filed by the petitioner. As against which, the petitioner has preferred the present Civil Revision Petition praying to set aside the order dated 10.09.2013 made in I.A.No.41 of 2010 in A.S.No.34 of 2010 on the file of the learned Subordinate Judge, Dharapuram.

3. The learned counsel appearing for the petitioner would contend that only for the reason that the description of property is not in order, the learned District Munsif, Kangayam, has negated the relevant claim of the petitioner. He would further contend that the petitioner is not introducing a new cause of action and a new case. In the said circumstances, it is necessary for the petitioner to rectify the mistake committed earlier before the trial Court.

4. Per contra, the learned counsel appearing for the respondents would contend that the petitioner herein has purchased the property only for initiating the litigation with the respondents. He would further contend that in the appeal stage it is not necessary for the petitioner to amend the plaint instead of filing the suit for partition.

5. Upon considering the arguments advanced by either side, it is useful to see the Judgment of this Court in **V.JAYALAKSHMI vs. KASIRAJAN** reported in **2016-5-L.W.810**, in which, this Court has held as follows;

“18. It may be relevant to note here that it is the settled proposition of law that the amendment of pleadings at any stage under Order 6 Rule 17 could be permitted. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings because the appeal is continuation of the suit.”

6. Further, this Court, in the case of **ARUMUGATHAMMAL vs. LAKSHMIAMMAL** reported in **2004-4-L.W.646** has held as follows;

“7. The question arises in this civil revision petition is, 'Whether an application to amend the plaint before the appellate court is maintainable'?

8. *The learned Advocate for the revision petitioner would submit that the trial court having given a finding in favour of the plaintiffs in respect of the Issue No.(1) that the plaintiffs are entitled to the suit property, had observed that the suit filed by the plaintiffs is barred by time and dismissed the suit on that ground and the said plea was not at all raised by the defendants in the written statement. It is also submitted that the defendants have already encroached a portion of the suit property and therefore, the plaintiffs have*

to recover possession from the defendants in respect of the said property and by mistake or inadvertence, they have not made such a prayer before the trial court and only before the lower appellate court the plaintiffs have been advised to make such a prayer and thereafter only, the plaintiffs have filed the application for amendment.

9. Order 6 Rule 17 CPC provides for 'Amendment of the Pleadings' which states, "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 real questions in controversy between the parties".

10. The word 'The court may at any stage' is a discretionary power given to the court to allow an application for amendment. But, when the court comes to the conclusion that such amendments are necessary for the purpose of determining the real question in controversy between the parties, it shall allow the amendment. Further, the word 'proceedings' used in Rule 17 has got to be considered with reference to the context in which it has been used. There is nothing in the section to

show that at any stage of the proceedings, it does not relate to the appeal, which may arise out of the suit. In fact, now it is well settled law that an appeal is a continuation of the suit. Whenever an appeal lies against any decree, the appeal is filed in accordance with law and the finality of the decree of the trial court comes to an end and therefore, it is clear that an application for amendment could be filed even before the appellate court.”

7. In the said circumstances, it is necessary to see whether the petitioner attempted to introduce a new case? Now, on going through the Judgment rendered by the learned District Munsif, Kangayam, in order to prove his possession, the petitioner has exhibited 13 documents, as per Ex.A.1, which was the Sale Deed stands in the name of the petitioner establishes the fact that he has purchased 1/4th share in the suit property and the other documents, which were marked as Ex.A2 to Ex.A13 are specifically established the fact that he was running a cycle shop in the property, for which, he prayed for the injunction. In the said circumstances, if really the amendment is not permitted it is difficult for the petitioner to establish his case.

8. It is well settled position of law that for obtaining the relief of injunction, it is necessary for the party to claim the said prayer to prove his possession. The documents exhibited before the trial Court on the side of the petitioner would reveal the fact that he created a *prima facie* case to show that he is in the suit schedule property. In the affidavit filed by the petitioner before the First Appellate Court, he has stated that only by inadvertence, the description of property was not correctly mentioned in the plaint. In this occasion, it is relevant and useful to see the Judgment of our Honourable Apex Court in **MAHILA RAMKALI DEVI vs. NANDRAM** reported in (2015) 13 SCC 132, in which, the Honourable Apex Court has held as follows;

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought

amendment in paragraph 3 of the original plaint, the High Court ought not to have rejected the application.

22. In the case of Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon, AIR 1969 SC 1267, this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

23. In Pandit Ishwardas vs. State of Madhya Pradesh and Ors., AIR 1979 SC 551, this Court observed :-

“We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no legal basis for this assumption. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into

consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.”

9. As per the judgment referred above, for the mistake committed by the party, allowing the amendment application is not illegal. In this case also in the judgment rendered by the learned District Munsif, Kangeyam, he has specifically stated that the petitioner is entitled over 1/4th share as per the Sale Deed dated 20.11.1991, which was exhibited as Ex.A.1. In the said circumstances, only for proving the possession of the property, in which, he was running a cycle shop, he has filed the interim application before the trial Court. In my considered view, allowing of the amendment application will not prejudice the respondents.

10. Accordingly, the order dated 10.09.2013 passed by the learned Subordinate Judge, Dharapuram, Thirupur District in I.A.No.41 of 2010 in A.S.No.34 of 2010 is hereby set aside and the application for amendment of plaint is allowed and the Civil Revision Petition stands allowed. Considering the fact that the Appeal Suit is pending from the year 2010, the learned Subordinate Judge, Dharapuram, Thirupur District, is directed to dispose of the same, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

03.09.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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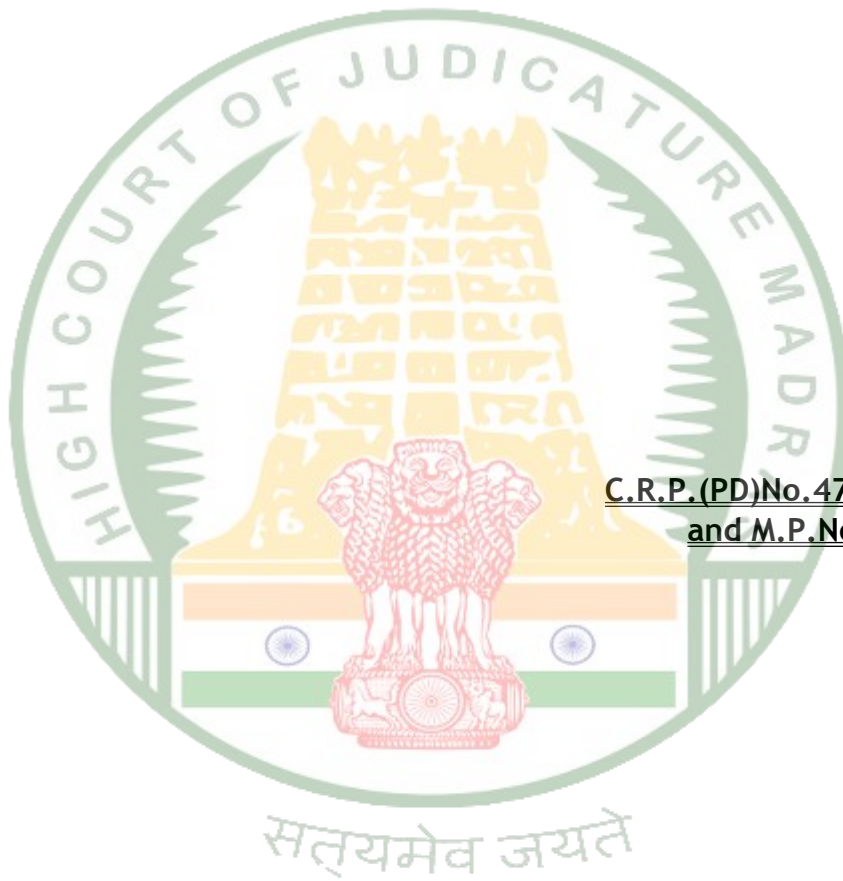
The Subordinate Judge,
Dharapuram, Thirupur District.



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R.PONGIAPPAN, J.,

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