

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.R.P.NPD.No.1269 of 2014

Arumugha Sundaram ... Petitioner

Vs

1.P.Samuvel

2. John Kennady ... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order of the learned II Additional Subordinate Judge of Cuddalore dismissing I.A.No.32 of 2013 in A.S.No.105 of 2011, dated 27.01.2014.

For Petitioner : Mr.R.Gururaj

For Respondents : Chezhan
for Mrs.R.Meenal

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ORDER

The petitioner is the plaintiff in O.S.No.168 of 2010, who was unsuccessful in the suit had filed an application in I.A.No.32 of 2013 in A.S.No.105 of 2011 for amending the plaint under Order VI Rule 17 C.P.C.

appeal before the II Additional Subordinate Judge, Cuddalore. In the said appeal, the petitioners filed I.A.No.32 of 2013 seeking to amend the plaint for a mandatory injunction to direct the defendants to demolish the walls raised on the suit property pursuant to the dismissal of the suit on 14.10.2011.

3. The First Appellate Court, by an impugned fair and decretal order dated 27.01.2014 has observed that the records indicates that the appeal is pending for a period of nearly three years and the appeal was posted for arguments on 23.01.2012, and that the petitioners have come up with an application stating that the respondents have put up a wall after passing of decree in the year 2011 and same was not at all believable.

4. The Court has observed that amendment to the plaint cannot be allowed after trial. In this case, admittedly a decree has been passed and therefore, it is not open for the petitioner to make out a new case to amend the plaint. The Court has observed that the only remedy available to the petitioner is to file a separate suit for a different cause of action as the alleged construction of the wall is said to have been put up after passing of the judgment and decree in a suit on 14.10.2011.

5. The learned counsel for the respondents opposing the revision petition referred to the decision of the Hon'ble Supreme Court in the case of ***Rajkumar Gurawara (Dead) Through Lrs v. S.K.Sarwagi and Co. Pvt. Ltd., & another***

[2008(5) CTC 535], wherein it was held that only at pre-trial stage amendment can be allowed.

6. The learned counsel also relied on a decision of the Hon'ble Supreme Court in the case of **Chakreshwari Construction Private Limited v. Manohar Lal** [(2017) 5 SCC 212], wherein in the findings at paragraph 13, 15 and 16 it reads as follows:

"13. The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In Revajeetu Builders and Developers v. Narayanswamy & Sons, this Court, after examining the entire previous case law on the subject, culled out the following principle in para 63 of the judgment which reads as under:

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injunctive or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred

by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

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15. It is for the reasons that firstly, the amendment proposed did not change the nature of the case originally set up by the appellant in the eviction petition; secondly, the amendment did not introduce any fresh cause of action; thirdly, the amendment was relevant for deciding the question of subletting and availability of alternative accommodation with the respondent; fourthly, the facts proposed in the amendment not being in the personal knowledge of the appellant and having obtained from the State Department concerned recently, the same could be allowed to be brought on record for its consideration; fifthly, no prejudice was likely to be caused to the respondent, if the applications had been allowed because the respondent in such eventuality would have got an opportunity to make consequential amendment in his written statement and file additional documents in rebuttal; and lastly, in order to prove the case, the amendment proposed and permission to file documents should have been granted.

16. It is true that there was some delay on the part of the appellant in filing the applications but, in our opinion, the appellant had explained the delay. One cannot dispute that in appropriate cases, the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the court provided the amendment proposed is bona fide, relevant and necessary for deciding the rights of the parties involved in the lis."

7. Order VI Rule 17 CPC has proved that :

"The Court may at any stage of the proceedings can 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. However, the suit is subject to the controversy appended therein which reads as follows:

"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."

8. Order 6 Rule 17, C.P.C., confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are allowed liberally than those which are sought to be made after the commencement of the trial.

9. The law on the subject is very clear. Pre-trial amendment to the pleadings can be allowed liberally subject to however satisfaction of the court that the person seeking such amendment could not make such pleading despite exercise of due diligence at the time of filing of the original pleading.

10. However, the present case pertains to amendment to the pleading at the time of disposal of the suit between the first appeal before the Appellate Court. It is a case of the respondent that the amendment sought at best has

given rise to a fresh cause of action and therefore the petitioner can file a fresh suit.

11. There is no point in driving litigants to fresh litigations if the respondent has indeed put up the construction after the decree was passed. Therefore, the first appellate court could have differed the enquiry in the said I.A seeking to amend the plaint to the stage of final hearing of the appeal.

12. Therefore, the present civil revision petition is being allowed by setting aside the observation in the impugned order while granting liberty to the Court to mould the relief in terms of the said interlocutory application at the time of passing the final order in the above appeal.

13. Consequently, the present Revision Petition is partly allowed as above. Since the appeal is pending from the year 2011, the II Additional Subordinate Cuddalore is directed to dispose the appeal within a period of six months from the date receipt of a copy of this order. No costs.

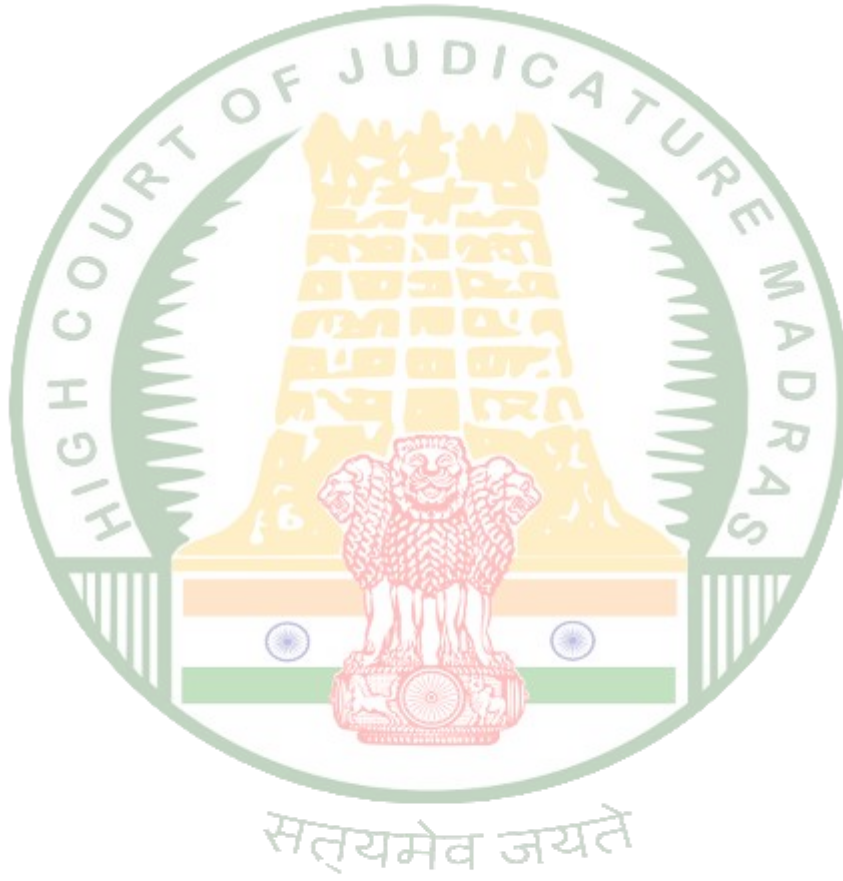
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Index:Yes/No
Internet:Yes/No
Speaking : Non Speaking order
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To

The II Additional Subordinate Judge,

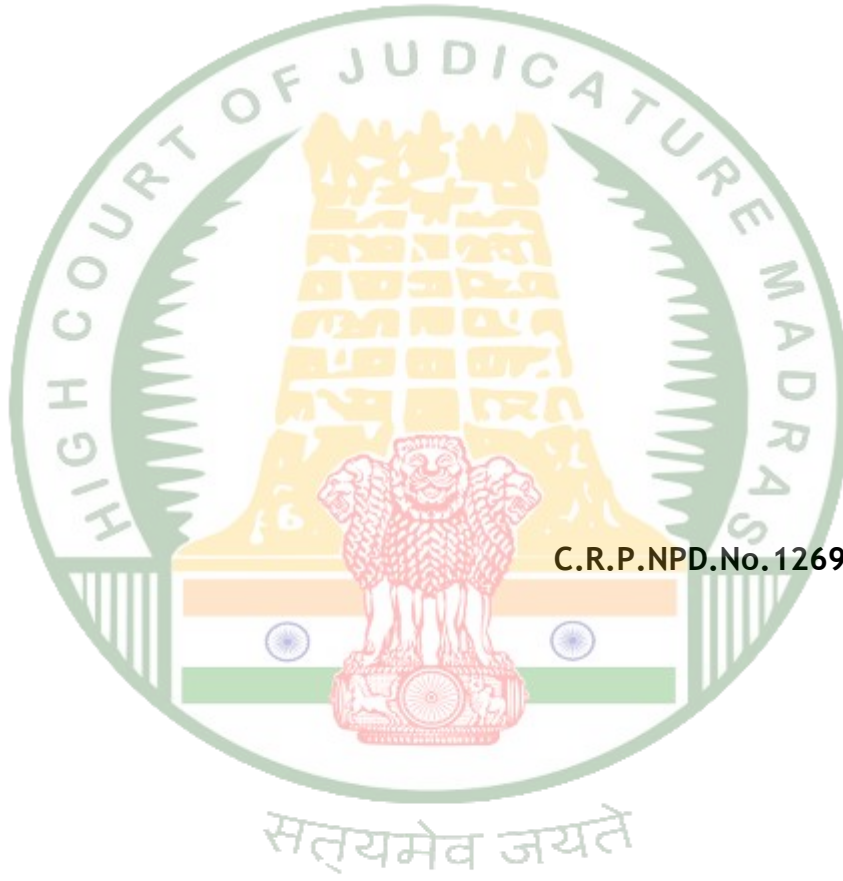
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C.SARAVANAN, J.,

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