

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 26.09.2019

Orders Pronounced on : 15.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.4131 of 2014

and

M.P.No.1 of 2014

Srinivasan

..Petitioner

Vs.

Kanikkameri

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC to set aside the order dated 05.09.2014 passed in Un.No.I.A.in Sr.No.2800 of 2014 in A.S.No.40 of 2013 on the file of the learned Sub-Court, Tiruttani by allowing this Civil Revision Petition.

For Petitioner : Mr.A.K.Raghavulu

For Respondent : Mr.A.R.Suresh

ORDER:

The plaintiff in O. S.No.41 of 2008 on the file of the learned District Munsif Court, Tiruttani is the petitioner herein. Before the trial court, as a plaintiff he filed the suit as against the respondent and two others, seeks the relief of declaration declaring that the plaintiff has a right, title and interest over the suit property, and consequentially he prayed for relief of permanent injunction restraining the defendants from interfering with his possession and enjoyment of the property. By judgment and decree dated 23.12.2011, the learned District Munsif, Tiruttani dismissed the suit. Aggrieved over the said judgment and decree dated 23.12.2011, the plaintiff has preferred appeal in A.S.No.40 of 2012 on the file of the learned Subordinate Judge, Tiruttani.

2. During the pendency of the said appeal, the petitioner filed an interlocutory application in Serial No.2800 of 2014. The petitioner filed the said application under Order 6 Rule 17 r/w Section 151 of CPC, through which he pleaded to permit him to amend as 10.5 cents instead of 21 cents in the schedule of property as mentioned in the plaint. The learned Subordinate Judge without assigning any I.A.No and without assigning any notice to the respondent / defendant, on 05.09.2014 dismissed the application filed by the petitioner. Aggrieved

over the said finding, the petitioner has approached this Court by way of filing this Civil Revision Petition, through which he seeks the relief to set aside the order dated 05.09.2004 and to allow the application filed by the petitioner after assigning the IA No.

3.Today when the petition is came up for hearing, the learned counsel appearing for the petitioner is present and argued as since the first appeal preferred by him is a continuation of the suit, he is entitled to file the petition under Order 6 Rule 17 of CPC. The position of law in respect to the said provision are well settled for determining the real question of controversy, at any stage, the Court has granted permission to the party concerned for amending the plaint. In this regard, he relied on the judgment of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.** in Civil Appeal No.2785 of 2008. In the above referred judgment, our Hon'ble Apex Court has held as follows:

"15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & Ors. which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side,

and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

4. In this aspect, it is also necessary to see the judgment of **Baldev Singh and Others Vs. Manohar Singh and another** reported in **(2006) 6 SCC 498**, in which the Hon'ble Apex Court has held that *(Courts should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side).*

5. In the said circumstances, the learned counsel appearing on behalf of the respondent would contend that by way of amendment the petitioner wants to introduce a new case. Further, in respect to the prayer sought by the petitioner there was no cause of action on his side.

6. The submissions made by the counsel appearing on either side are considered.

7. Before entering into the merits and demerits of the petition,

for disposing this application it is necessary to see the plaint averments made by the petitioner. According to the plaintiff, in the year 1963 his father purchased the suit schedule property from his lawful vendor and the same is registered in Sub Registrar Office at Tiruttani. After made purchase the plaintiff's father took possession and paying kist to the Government till his death. The entire extent of the suit land is 0.83 cents. Out of 0.83 cents his father purchased 0.21 cents only. When at the time the surveyor came to the suit property for measuring the same, the defendant wantonly with an ulterior move restrained the surveyor in measuring the suit land. Only thereafter he has filed the suit for the relief of declaration and injunction. So according to the plaint averment he is the absolute owner of 0.21 cents.

8. Now on go through the affidavit filed by the petitioner in support of the petition filed by him he has stated the sale deed dated 27.02.1967 is in Telugu letters. In the said deed in respect to the property sold, in Telugu it was mentioned as "Artha Bagam" which is alone sold. So the recitals found in the said sale deed means that the vendor of the plaintiff's father sold half portion of the property mentioned in the sale deed. Accordingly, only 50% of the total extent mentioned in the sale deed was purchased by the petitioner's father.

In this area, as per the said sale deed the plaintiff's father purchased the property measuring an extent of 10.5 cents in SF.No.178/24, but in the plaint he has mentioned the extent of suit property as 21 cents, which is nothing but due to the confusion over the language written in the sale deed.

9. Only in the said circumstances the petitioner has necessarily to file the interlocutory application before the first appellate court to amend the extent of the suit schedule property as 10.5 cents instead of 21 cents. Accordingly, the plaintiff himself admitted he is having right only in an extent of 10.5 cents. In the said circumstances amending the extent of property mentioned in the schedule of property in the plaint as 10.5 cents instead of 21 cents does not create any new cause of action. Further it cannot be said that the petitioner attempted to introduce a new case. In the judgment of **Baldev Singh and Others Vs. Manohar Singh and another** reported in **(2006) 6 SCC 498**, our Hon'ble Apex Court has held as follows:

"15....That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings

so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case."

10.As per the said principle, the amendment cannot be permitted only for the reasons for adding a new ground or defence or substituting or altering a defence and also for substituting a new cause of action. In this case, the factual aspects and the background for filing the application is entirely different. Only because of the reason that the petitioner not understanding the real particulars available in the sale deed wrongly mentioned the extent of property as 21 cents. So the mistake committed by the petitioner is not wilful. Further because of the reason that the schedule of the property is amended, no new cause of action is arised. Further it cannot be said the petitioner introduced a new case. In fact, he intends to reduce the extent of property and otherwise he has not changed the character of the suit.

11.Therefore for the reasons stated above, the Civil Revision

Petition filed by the petitioner is allowed. The dismissal order dated 05.09.2014 passed in Un.No.I.A.in Sr.No.2800 of 2014 in A.S.No.40 of 2013 on the file of the learned Sub-Court, Tiruttani is set aside. The learned Subordinate Judge, Tirutanni is directed to permit the petitioner to carry out the amendment in the plaint before proceeding with the case. Consequently, connected miscellaneous petition is closed. No costs.

15.10.2019

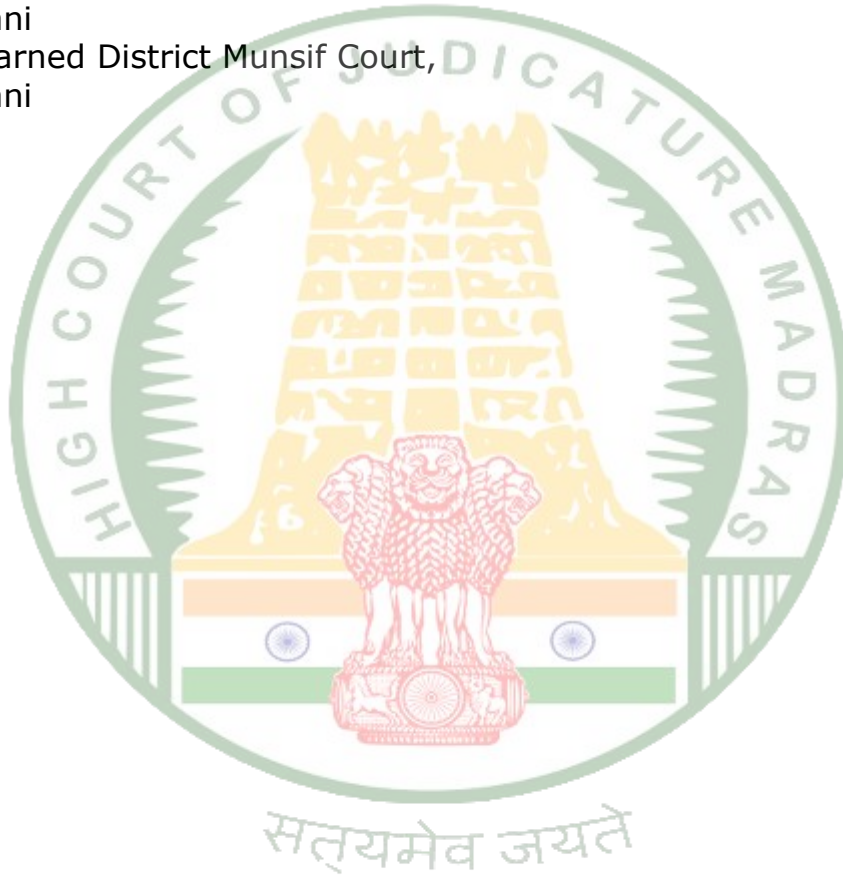
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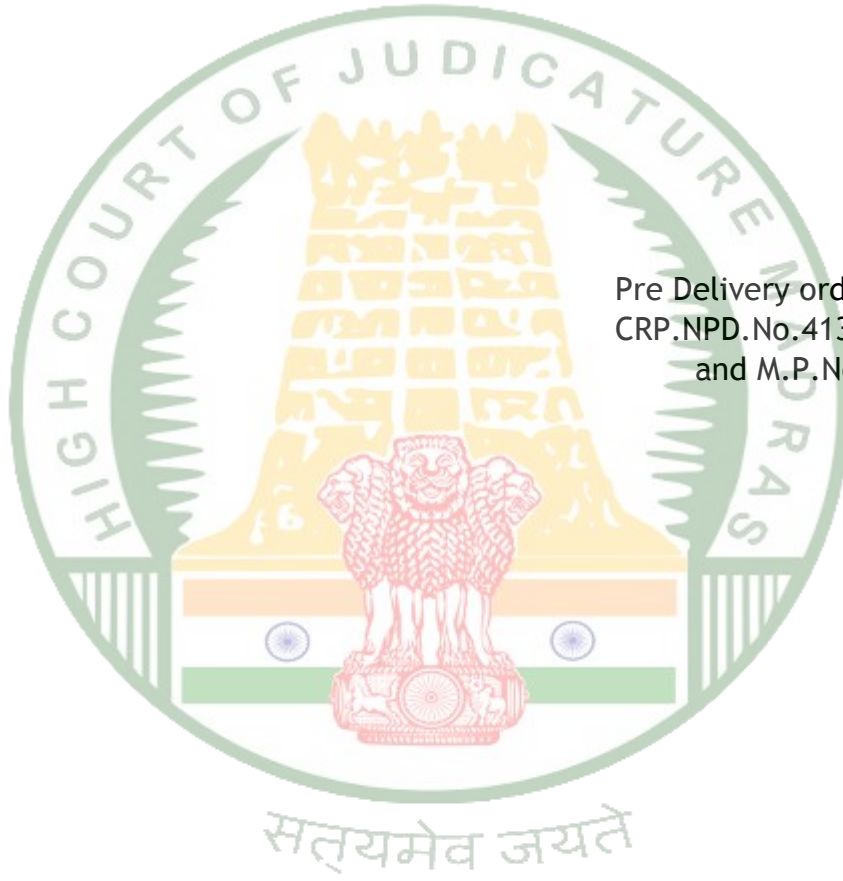
1. The learned Sub-Court,
Tiruttani
2. The learned District Munsif Court,
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R.PONGIAPPAN,J.

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