

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.4730 of 2014

and

M.P.No.1 of 2014

1.Soundarajan
2.Sekar

.. Petitioners

vs.

1.Vijayalakshmi
2.Santhi
3.Jayanthi
4.Susila Jenifer
5.Andal

.. Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, against the order and decretal order dated 17.07.2014 made in I.A.No.126 of 2013 in O.S.No.23 of 2008 on the file of the III Additional District Court, Puducherry.

For Petitioners

: Mrs.V.Srimathi

For Respondents

: Mr.B.Vijay

ORDER

The petitioners are the defendants in O.S.No.23 of 2008 before the III Additional District Judge, Pondicherry. The respondents had filed the suit for partition of the suit Schedule properties. In the said suit, the petitioner's had

also filed their written statement on 14.10.2008. It appears that the suit was decreed ex parte and thereafter the said order was set aside.

2. At that stage the petitioners sought to file additional written statement and therefore filed an application under Order 8 Rule 9 of CPC read with Section 151 of CPC vide I.A.No. 126 of 2013.

3. The respondents/plaintiffs filed their counter opposing the leave to file additional written statement on the ground that that the additional written statement proposed to be filed was belated after a new counsel was engaged and due change of opinion.

4. The court has observed that in the original written statement the petitioners have expressed their willingness for partition but in the additional written statement to have stated that the suit property was a dwelling house and cannot be partitioned. Therefore the petitioner's have taken a destructive stand and were not willing for partition of the dwelling house. Apart from the above, the petitioner's have made several averments on facts.

5. In **B.K.Narayana Pillai vs Parameswaran Pillai** (2001) 1 SCC 712 the Court held as follows:-

“ The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

6. In **P.A. Jayalakshmi vs H. Saradha**, (2009) 14 SCC 525 while considering the correctness of the order dismissing the leave to file to additional written statement, the Hon’ble Supreme Court answered the issue in the issue in the light of the test for amendment to the pleading under Order 6 Rule 17 of CPC in the light of the amendment to CPC in 1999 and 2002. The court held as follows:-

13. There cannot be any doubt or dispute that the courts should be liberal in allowing applications for leave to amend pleadings but it is also well settled that the courts must bear in mind the statutory limitations brought about by reason of the Code of Civil Procedure (Amendment) Acts; the proviso appended to Order 6 Rule 17 being one of them. In **North Eastern Railway Admn. vs Bhagwan Das** [(2008) 8 SCC 511] the law has been laid down by this Court in the following terms: (SCC p. 517, para 16)

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In **Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil** [AIR 1957 SC 363] 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. (Also see **Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar** [(1990) 1 SCC 166].)”

7. The above observations was made by the Hon'ble Court in the light of the following passages in para 9 the Court held as follows:

9. By reason of the Code of Civil Procedure (Amendment) Act, 1976, measures have been taken for early disposal of the suits. In furtherance of the aforementioned parliamentary object, further amendments were carried out in the years 1999 and 2002. With a view to put an end to the practice of filing applications for amendments of pleadings belatedly, a proviso was added to Order 6 Rule 17 which reads as under:

“17. **Amendment of pleadings.**—The court may at any stage of the proceedings allow either party to alter or amend his pleading 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:

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. In **B.K. Narayana Pillai vs Parameswaran Pillai**, (2000) 1 SCC 712 referred to supra the Hon’ble Supreme Court also referred to the following passage from **A.K. Gupta & Sons Ltd. vs Damodar Valley Corpn.** AIR 1967 SC 96 wherein it was held as follows:-

“4. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal [(1887) 19 QBD 394 : 56 LJ QB 621] . But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan [AIR 1921 PC 50 : ILR 48 Cal 110] and L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357 : 1957 SCR 438]

The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (Cropper v. Smith [(1884) 26 ChD 700 : 53 LJ Ch 891 : 51 LT 729]) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (Kisandas Rupchand v. Rachappa Vithoba Shilwant [ILR (1909) 33 Bom 644 : 11 Bom LR 1042] approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363 : 1957 SCR 595]).

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke v. Gill* [(1873) 8 CP 107 : 42 LJCP 98 : 28 LT 32] in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corpn. Ltd.* [(1962) 2 All ER 24 (CA)] and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas': *Dornan v. J.W. Ellis and Co. Ltd.* [(1962) 1 All ER 303 (CA)] This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in **Ganga Bai v. Vijay Kumar** [(1974) 2 SCC 393] this Court held: (SCC p. 399, para 22)

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court."

In *Ganesh Trading Co. v. Moji Ram* [(1978) 2 SCC 91] it was held: (SCC p. 93, para 4)

"4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the

other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

9. Thus, both plaintiff or defendant is entitled to amend plaint, written statement or file additional written statement. It is however subject to an exception that by the proposed amendment the opposite party should not be subject to injustice and that any admission made in favour of the other party is not withdrawn. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings.

10. In the present case, it was stated that the suit properties are house property and therefore cannot be partitioned . The petitioners were residing in it. The fact whether property can be partitioned or has to be sold and proceeds from the sale of the suit property has to be shared between the parties to the suit goes to the very root of the case. Though the respondents have partially resiled from the stand in the original written statement, however, it is not as if these averments in the additional written statements are irrelevant in a suit

for partition as they go to the root of ultimate relief that can be granted while passing final decree.

11. Therefore, no prejudice or harm would be caused if the amendment is allowed. Consequently, I'm of the view that the impugned order passed by the Third Additional District Judge, Pondicherry is liable to be set aside and the present Civil Revision Petition deserves to be allowed.

12. It is noticed that the suit is of year 2008 and the proceedings have been stymied due to the pendency of the present Civil Revision Petition. Therefore, the Third Additional District Judge, Pondicherry shall endeavour to complete the trial and pass final Judgment within a period of nine months from the date of receipt of this order.

13. The Present Civil Revision Petition is thus allowed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No
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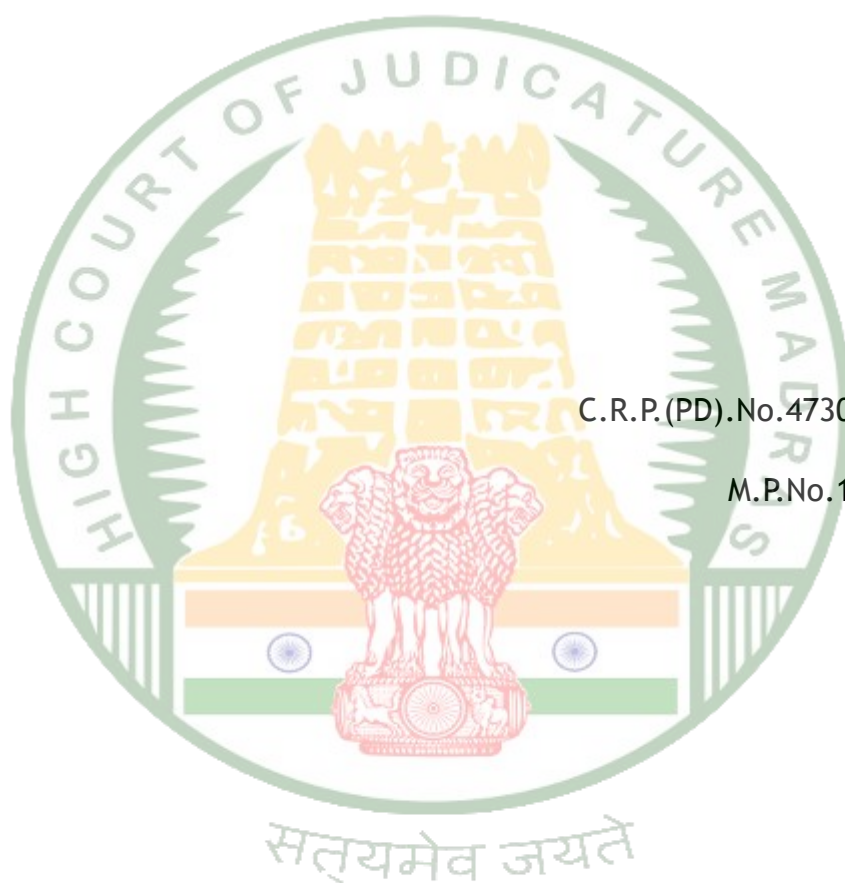
1. III Additional District Court,
Puducherry.
2. The Section Officer,
V.R. Section, High Court, Madras.



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