

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

CRP (PD) NO.4763 OF 2017
AND CMP NOS.22421 AND 22422 OF 2017

1.V.Vanitha
2.Arthi
3.Anuradha

.. Petitioners

Versus

1.Rajamani Ammal
2.Sridevi
3.Shenbagaraman

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 31.10.2017 made in I.A.No.202 of 2017 in O.S.No.128 of 2015 on the file of III Additional District Court, Tiruvallur at Poonamallee.

For Petitioners :

Mr.G.Masilamani
Senior Counsel
for Mr.T.Sathiyamoorthy

For Respondents 1&2: Mr.S.Ganesh

For Respondent 3 : Mr.E.Om Prakash

ORDER

This Civil Revision Petition is directed against the order passed by the Trial Court rejecting the interlocutory application filed by petitioners/plaintiffs for amendment of plaint.

2. The dispute revolves around two survey numbers viz., S.No.188/1A and S.No.188/25. According to the petitioners, originally they filed a suit for declaration and injunction in O.S.No.330 of 2010 before the Sub Court, Poonamallee, now transferred to III Additional District Court, Thiruvallur at Poonamallee and renumbered as O.S.No.128 of 2015. According to them, they are the title holders in respect of S.No.188/1A having acquired the suit property through a WILL executed by one Mr.Sampath on 28.12.1992 vide Document No.61 of 1992. The said Sampath has also executed a gift deed in favour of his sister Mangalam Ammal gifting 18 cents of land in S.No.188/25 on 11.09.1942. The respondents are the legal heirs of the said Mangalam Ammal.

3. The respondents filed a suit in O.S.No.641 of 2004 before the Principal District Munsif Court, Poonamallee, directing the

petitioners herein to quit and deliver vacant possession of the "B" Schedule property described therein and for permanent injunction. The suit property falls within S.No.188/25. The Trial Court granted an order of interim injunction. When the respondents filed a vacate stay petition, the Trial Court observed that *"All the documents produced by the defendants pertaining to S.No.188/1B and 188/1A and not with respect to S.No.188/25. It is also not the case of the defendants that S.No.188/25 has subsequently become S.No.188/1A or 1B"* vide order dated 08.07.2009. The said suit is still pending.

4. Subsequently, the Government acquired lands for the purpose of laying road. Notice was issued to the petitioners and they have participated in the award proceedings. However, after the order of interim injunction in I.A.No.1034 of 2006 in O.S.No.641 of 2004, the power of attorney of the respondents sold the property of the petitioners, measuring an extent of 5580 SFT describing the same comprised in S.No.188/25 corresponding new S.No.188/1A by sale deed dated 14.12.2009. This necessitated the petitioners to file O.S.No.128 of 2015 for declaration and injunction.

5. Somewhere in the year 2012, after the acquisition was over, the respondents said to have trespassed into the property and taken possession of the same. Therefore, the petitioners have now come out with an amendment application in I.A.No.202 of 2017 in O.S.No.128 of 2015 seeking the relief of recovery of possession as an alternative prayer. The amendment sought for by the petitioners reads as follows:

PARTICULARS OF AMENDMENT

Add After Paragraph No.12

12.a. The Plaintiff submit that during the lifetime of Mr.P.S.Sampath Mudaliar an extent of 446 Sq.Ft was acquired by the National High Ways and the compensation amount was also received only by the said Mr.P.S.Sampath Mudaliar. Subsequently pending suit an extent of 128 Sq.Meters (128X10.764 = 1377.792 Sq.Ft.) or about 1378 Sq.Ft. was thus acquired for the purpose of widening the Road by the National Highways department and thus there is a balance land of 4192 Sq.Ft. with existing dilapidated buildings is now in existence. It is further submitted that subsequent notification was also served on the first plaintiff. The said compensation amount is kept in deposit.

The plaintiff further states that after filing of the above suit and particularly after demolition of three shops in the front portion the defendants in herein in a highhanded manner trespassed upon the suit property. It is further submitted that taking advantage of the absence of the plaintiff and demolition by highways department, the defendants have trespassed upon the suit property and illegally in occupation. The acts of the defendants are highly illegal and unlawful. Thus after filing of the above suit, the defendants trespassed upon the suit property and under those circumstances the plaintiff is now filing the suit praying for declaration of their title and also for the recovery of vacant possession of the suit property, after ejecting the defendants there from.

12.6. *The plaintiffs further submit that even through the plaintiffs are entitled to claim damages for the past period, and the plaintiff are claiming damages at rate of Rs.15,000/- per month for the future period commencing from 16th August 2017 till the date of delivery of vacant possession of the suit property to the plaintiff.*

Delete Paragraph No.16 and the same may be substituted with

16. The plaintiff values this suit for the purpose of Court Fee and Jurisdiction for the relief of declaration and also for recovery of vacant possession after ejecting the defendants there from the suit property at Rs.91,34,368/- and pays the Court fee of Rs.6,85,078.25 U/s.25(a) of TNCF Act, for the relief of declaration as to document at Rs.1,000/- and pays court fee of Rs.75.50 ps U/s.25(d) of T.N.C.F. Act in all the suit is totally valued at Rs.91,35,368/- and total court fee of Rs.6,85,153.75 the plaintiffs already paid a sum of Rs.5,03,332.25/- by the plaintiff and the plaintiffs herein pays the balance court fee of Rs.1,81,821.50.

Add After Paragraph No.17-a.

(a) "Delete" prayer "a" and the same may be substituted with the plaintiff therefore pray

a. For a declaration of Plaintiffs title to the suit property and also for a permanent injunction restraining the defendants their men, agents, servants, etc., from interfering

with the plaintiffs possession and enjoyment of the suit property.

(or) alternatively praying for a declaration of plaintiffs title to the suit property described in the schedule hereunder and for recovery of vacant possession after evicting the defendants from the suit property.

6. directing the defendant to pay damages at the rate of Rs.15,000/- (Rupees Fifteen Thousand Only) per month by way of damages for wrongful use and occupation by the defendants from this 16th August 2017 to the plaintiffs till the date of delivery of vacant possession of the suit property to the plaintiffs herein.

c. Declaring the Sale Deed dated 14.12.2009 bearing document No.3964 of 2010 of S.R.O. Alandur by Defendants 1 and 2 in favour of 3rd Defendant is unlawful, invalid in law, fraudulent, null and void and not binding on the plaintiffs.

d. Directing the defendants to pay cost of the suit and

e. For such further or other orders as this Hon'ble Court may deem fit for proper in the circumstances of the case and thus render justice. "

6. The said amendment application was dismissed by the Trial Court on 31.10.2017 on the ground that the property described in "A" Schedule in O.S.No.641 of 2004 and the property described in "A" Schedule in the present suit viz., O.S.No.128 of 2015 are one and the same and the Trial Court had found that the possession was with the respondents. Since the said order has not been set aside till date, the relief sought for by the petitioners is not permissible and barred by limitation.

7. The learned Senior Counsel appearing for the petitioners would rely on the following judgments:

(i) Full Bench judgment of this Court in
Hi.SHEET INDUSTRIES VS. LITELON LIMITED [2006
(5) CTC 609]

(ii) Judgment of the Hon'ble Supreme Court

in **RAMCHANDRA SAKHARAM MAHAJAN VS. DAMODAR TRIMBAK TANKSALE (D) AND OTHERS**
[2007 (6) SCC 737]

(iii) Judgment of the Hon'ble Supreme Court
 in **SURENDER KUMAR SHARMA VS. MAKHAN SINGH**
[2009 (10) SCC 626]

(iv) Judgment of the Hon'ble Supreme Court
 in **ABDUL REHMAN VS. MOHD.RULDU AND OTHERS**
[2012 (11) SC 341]

(v) Judgment of this Court in **T.RAJA REDDY VS. C.SRINIVASA REDDY AND OTHERS** [2013 (2) MWN (CIVIL) 395]

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8. Per contra, learned counsel appearing for the third respondent would contend that there exists a dispute over the identity of the property. In the suit filed by the respondents in O.S.No.641 of 2004,

the boundaries are given as under:

"B" SCHEDULE PROPERTY:-

A portion of the "A" Schedule measuring East to West 30 feet on both sides and North to South 60 feet on both sides and bounded on the

North by : "C" Schedule property;

South by : Porur Trunk Road

East by : Ramamoorthy's house and site and

West by : "C" Schedule property belongs to the plaintiffs

shown as "E F G D E" in the plaint plan."

Whereas, the suit filed by the petitioners herein also describe the same boundaries and a claim is made in respect of the respondents' property.

Therefore, the Trial Court has rightly found that the injunction granted by the Trial Court in O.S.No.641 of 2004 remains intact and until it is set aside, the petitioners are not entitled to amend the plaint. Further, injunction was granted in the year 2004 itself, whereas the amendment application was filed only in the year 2017 and hence, it is barred by

limitation. Therefore also, the interlocutory application for amendment cannot be entertained.

9. The learned counsel appearing for the third respondent would rely on the following judgments in support of his contention:-

(i) Judgment of this Court in **S.KUPPUSAMY VS. P.K.SUBRAMANI & OTHERS [2005 (4) CTC 734]**

(ii) Judgment of the Hon'ble Supreme Court in **SOUTH KONKAN DISTILLERIES AND ANOTHER VS. PRABHAKAR GAJANAN NAIK AND OTHERS [2008 (14) SCC 632]**

(iii) Judgment of the Hon'ble Supreme Court in **GAUTAM SARUP VS. LEELA JETLY AND OTHERS [2008 (7) SCC 85]**

(iv) Judgment of the Hon'ble Supreme Court
in **REVAJEETU BUILDERS AND DEVELOPERS VS.
NARAYANASWAMY AND SONS AND OTHERS [2009
(10) SCC 84]**

(v) Judgment of this Court in **N.LALITHA
AND OTHERS VS. MANUJOTHI ASHRAMAM AND
OTHERS [2011 (2) CTC 28]**

(vi) Judgment of the Hon'ble Supreme Court
in **L.C.HANUMANTHAPPA (SINCE DEAD) REP. BY HIS
LEGAL REPRESENTATIVES VS. H.B.SHIVAKUMAR
[2016 (1) SCC 332]**

10. Heard the submissions made on either side and perused
the materials available on record.

11. From the perusal of the records produced before this
Court, it is seen that the Trial Court in O.S.No.641 of 2004, in an

application filed for injunction vide I.A.No.1034 of 2006, has categorically found that the properties in S.No.188/1A and 1B and S.No.188/25 are entirely different. In that event, the present finding of the Trial Court that they are one and the same and the respondents are in possession of both the properties, cannot be correct. As claimed by the petitioners that the respondents have trespassed into the property somewhere in the year 2012. Though exact date was not given, the fact remains that there were proceedings by the District Collector to the effect that the S.Nos.188/25 and 188/1A are distinct and separate. In so far as the award of compensation is concerned, it was ordered in favour of the petitioners herein, by notifying the acquisition against them. A perusal of the sale deed dated 14.12.2009 made on behalf of the respondents also shows that more than one boundary of the property is land in S.No.188/25, which means that the property sold should be S.No.188/1A. In that event, as contended by the learned Senior Counsel there is dispute in identity of the suit property. Though the respondents have contended in previous suit, both the properties are separate and distinct, sold the property describing the same comprised in New S.No.188/1A. These are the factual disputes, which can be decided only

after elaborate trial. Be that as it may, the cause of action has arisen to file a suit for declaration and injunction after execution of the sale deed bearing document No.3964/2010. In that view of the matter, the alternative prayer of recovery of possession sought for is within a period of seven years.

12. This Court in **NATESAN AND ANOTHER VS. GOVINDASAMI AND ANOTHER [1988 (2) LW 397]** has observed as under:

".....But however, in this case, I find that what is asked for by way of amendment is only an alternative prayer for possession. This prayer becomes important because of the fact that possession is claimed by the defendants and in case the trial Court finds that they are in possession, then the plaintiffs will be without any effective remedy. It is only to avoid such a contingency and to avoid multiplicity of proceedings, the provisions in Order 6, Rule 7, Civil Procedure Code are intended. In this case, I am satisfied that the interests of the defendants are not going to be prejudiced in any manner, since the proposed amendment does not charge the character of the suit in any manner. However, the petitioners should compensate the

respondents for having delayed the matter unduly. Therefore, this civil revision petition is allowed and the amendment petition will stand allowed, on condition that the petitioners pay a sum of Rs. 200 to the respondents by way of costs incurred in contesting the petition for amendment. Time for payment of costs, four weeks from this date. There will be no order as to costs in this civil revision petition.

13. Further, this Court in **CHURCH OF SOUTH INDIA TRUST ASSOCIATION, TIRUCHIRAPALLI AND OTHERS VS. KOVIL PILLAI AND OTHERS [2007 (5) CTC 595]** brought down the principles that are governing the application filed under Order 6 Rule 17 CPC, which reads as under:

"13. A perusal of the judgments cited by the learned Counsel for the petitioners would bring out the following principles that are governing the Application filed under Order 6 Rule 17 CPC:

1)Amendment to the pleadings cannot be turned down by courts merely on the score that they introduce an inconsistent plea or a new cause of action.

2)The true test is whether the amendment is foreign

to the subject matter of the suit and if not whether it would be in the interest of justice to grant it.

3)Amendment may be allowed irrespective of law of limitation, if the cause of action is not going to be changed and in the interest of justice.

4)Since the amendment of the plaint being the discretion of the court, it need not be refused on technical grounds.

5)Alternative relief sought by way of amendment can be allowed even if belated, but the other side should be compensated with costs.

6)Allowing of this Application is a rule and rejection is an exception.

7)Pre-trial amendment are to be allowed more liberally than those which are sought to be made after the commencement of trial or after the conclusion thereof.

8)If it is permissible for the plaintiff to file an independent suit, there is no difficulty in accepting his Application for amendment of plaint.

14. Now let me consider the facts of the present case

in the light of the above well settled legal principles.

15. *The main prayer in the suit is for a declaration to declare that the suit property belongs to the plaintiffs on the basis of their uninterrupted possession. The municipality in their written statement contended that the property belonged to them and the Tahsildar on 22.12.1998 filed a written statement stating that the property belonged to the Government. In such circumstances, the amendment Application was filed for an alternative prayer of perfection of title by adverse possession and also a descriptive para to be added in the plaint to this effect.*

16. *It is true that the suit has been pending from 1990 onwards, but the written statement of the Tahsildar was filed only in December 1998. Further, delay alone is not the criterion to reject an Application filed under Order 6 Rule 17 CPC. If the proposed amendment does not bring in a new cause of action or does not alter the nature and character of the suit, the same could be allowed, even if it is belated by ordering cost to the other side by way of compensation.*

17. *The trial court observed that the trial has*

commenced and the suit is posted for cross-examination of defendants 7 to 9 and therefore the amendment Application if allowed would further delay the proceedings. This reasoning given by the trial court is not correct as amendment could be ordered at any time at any stage of the proceedings for the purpose of determining the real questions in controversy between the parties. Further in my considered view the proposed alternative prayer and the addition of description in the plaint would not alter the nature and character of the suit and in fact it is in consonance with the pleadings of the plaintiffs pleading that they have been in possession of the property right from 2.4.1916. It is also pertinent to add that neither the Government nor the municipality have filed a counter opposing the amendment application. "

14. Hence, it is clear that the consistent view taken by this Court is that the interlocutory application for amendment cannot be rejected merely on the ground of delay. The reasoning given by the Trial Court is not correct. Amendment could be ordered at any time at any stage of the proceedings for the purpose of determining the real questions in controversy between the parties.

15. This view has been further confirmed by the Hon'ble Supreme Court in **SURENDER KUMAR SHARMA VS. MAKHAN SINGH [2009 (10) SCC 626]** and the relevant paragraphs are extracted hereunder:

"5. As noted herein earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and latches in making the application for amendment cannot be

a ground to refuse amendment.

6. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by cost or otherwise.

[See B.K. N. Pillai Vs. P. Pillai and another [AIR 2000 SC 614 at Page 616]. Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.

7. So far as the second ground is concerned i.e. the prayer for amendment of plaint, if allowed, shall change the nature and character of the suit, we are unable to accept this view of the High Court. We have carefully examined the amendment prayed for and after going through the application for amendment of the plaint, we are of the view that the question of changing the nature and character of the suit, if amendment is allowed, cannot arise at all. The

suit has been filed for eviction inter alia on the ground of arrears of rent. It cannot be disputed that even after the amendment, the suit would remain a suit for eviction. Therefore, we are unable to agree that if the amendment of the plaint is allowed, the nature and character of the suit shall be changed. Accordingly, the High Court was not justified in holding that the nature and character of the suit shall be changed, if such prayer for amendment is allowed. "

16. The Hon'ble Supreme Court in **ABDUL REHMAN AND ANOTHER VS. MOHD. RULDU AND OTHERS [2012 (11) SC 341]** following the judgment of **PANKAJA AND ANOTHER VS. YELLAPPA (DEAD) BY LRS. AND OTHERS [AIR 2004 SC 4102]** has observed as under:

"14. In Pankaja & Anr. vs. Yellappa (Dead) By Lrs. & Ors. AIR 2004 SC 4102 = (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary

factual basis had already been laid down in the plaint in regard to the title.

15) We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties. "

17. A Full Bench of this Court in **HI. SHEET INDUSTRIES VS. LITELON LIMITED [2006 (5) CTC 609]** has observed as under:

"11.13. Ordinarily, a suit is tried at all stages on the cause of action as it existed on the date of its institution, but it is open to the Court even including a Court of appeal to take notice of the events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances, where it is shown that the relief claimed originally has (i) by reason of subsequent change of circumstances become inappropriate, or (2) where it is

necessary to take notice of the changed circumstances, in order to shorten the litigation or (3) to do complete justice between the parties.

11.14. In view of the above legal proposition, the Court cannot shut its eyes and cause damage to the party by not allowing the amendment. It is therefore necessary to take notice of the changed circumstances, which will have the effect of shortening the litigation and of doing complete justice between the parties.

11.15. In the instant case, the plaintiff has claimed the relief of damages alternatively and the same is permitted by the Court. Thus, Section 40 of the Specific Relief Act is as clear as day of light. The plaintiff in this case is entitled to claim damages and has legal right to seek for amendment.

11.16. In fact, in our considered opinion, there is no reasonableness on the part of the defendant to oppose for amendment. Whether there has been unreasonableness or unfairness is to be determined by reference to all the circumstances in which the material rights are created or effected. In order to establish the defence of unreasonableness or unfairness, it is necessary to point out the matters concerning the creation or qualification of the material contractual obligation which render it not fair and

honest to call for its execution, it is not needful that there was any intentional unfairness or dishonesty at that time.

11.17. In our considered opinion, in this case, it is clear that we cannot term the act of plaintiff as a mala fide act and the defendant could not establish the defence of unreasonableness or unfairness on the part of the plaintiff. Further, on the basis of the material placed, it appears that there is no circumstance which gives right to a position of undue influence, hardship or any kind of the nature. In the absence of such special circumstances, the relief could not be refused on the ground of delay or unreasonableness or unfairness.

11.18. In the facts and circumstances of the case, it cannot be said that ascertainment of damages is uncalled for. Damages can be assessed for the loss or injury if the plaintiff has suffered, hence, damages is a relevant factor. The trial Court may refuse the case of the plaintiff and dismiss the same. It is a different issue. Therefore, as observed by the Hon'ble Supreme Court in Rajesh Kumar

Aggarwal(2) case, the Court should not go into the correctness or falsity of the case in the amendment and it should not record a finding on merits of the amendment and the merits of the amendment sought to be incorporation by way of amendment are not to be adjudged at the state of allowing the prayer for amendment. The Supreme Court has indicated that if this cardinal principle has not been followed, it is nothing but injustice. Therefore, we would like to limit our decision only on the three points of reference, without touching the merits of the case.

11.19. In the instant case, the suit is instituted in October, 1990. The amendments came into force with effect from 01.07.2002. Therefore, the proviso to Rule 17 of Order 6 CPC is not applicable in the instant case, however, we clarify that those amendments under Act 22 of 2002 are applicable to the pleadings instituted with effect from 01.07.2002.

12.00. RESULT:

In the result, the reference is answered holding :

(1) that the delay in filing the application for amendment of the pleadings is not fatal when no serious

prejudice is shown to have caused to the opposite party so as to take away any accrued right and the Court should take notice of the subsequent events in order to shorten the litigation to preserve and safeguard the rights of both the parties and to subserve the ends of justice and while doing so, the Court was not justified in allowing or disallowing the amendments so as to defeat the valuable rights of the parties and amendments of pleadings should be allowed which are necessary for determination of the real controversy in the suit and while doing so, the Court should not go into the correctness or falsity of the main case and it should not record the finding on the merits of the amendment as it should be done only during the trial of the suit. "

18. In the instant case, the petitioners though filed a suit in the year 2010 for the relief of declaration and injunction, in view of the change in circumstances that the respondents said to have trespassed into the property in the year 2012, seek for an alternative prayer of recovery of possession, which is valid in law.

19. The learned counsel for the third respondent relied on the judgment of the Hon'ble Supreme Court in **GAUTAM SARUP VS. LEELA JETLY AND OTHERS [2008 (7) SCC 85]** wherein it has been observed and held as under:

"27. Recently, in Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors. [(2007) 5 SCC 602], this Court observed :

"26. Therefore, it was neither a case of withdrawal of admission made in the written statement nor a case of washing out admission made by the appellant in the written statement. As noted herein earlier, by such amendment the appellant had kept the admissions intact and only added certain additional facts which need to be proved by the plaintiff and Defendants 2 to 8 to get shares in the suit properties alleged to have been admitted by the appellants in their written statement. Accordingly, we are of the view that the appellants are only raising an issue regarding the legitimacy of the plaintiff

and Defendants 3 to 7 to inherit the suit properties as heirs and legal representatives of the deceased Appasao. Therefore, it must be held that in view of our discussions made hereinabove, the High Court was not justified in reversing the order of the trial court and rejecting the application for amendment of the written statement."

28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

20. It is well settled that the petitioners cannot retain the prayer for interim injunction and simultaneously seek an alternative prayer of recovery of possession as they are mutually destructive to each other as rightly contended by the learned Senior Counsel. When the

petitioners admit that the respondents have trespassed into the property and that they are in possession, they can maintain the prayer for alternative relief of recovery of possession and cannot maintain the prayer for interim injunction. Therefore, the original prayer for interim injunction cannot be retained. This Court therefore is of the view that while allowing the amendment application for recovery of possession, the alternative destructive prayer of permanent injunction has to be struck down.

21. The judgments relied on by the learned counsel for the third respondent in **N.LALITHA AND OTHERS VS. MANJUJOTHI ASHRAMAM [2011 (2) CTC 28]** and **L.C.HANUMANTHAPPA VS. H.B.SHIVAKUMAR [2016 (1) SCC 332]** cannot be applied to this case, as the nature of the suit is not changed or altered. In so far as the prayer of the suit is concerned, it is not altered or changed and it sub-serves the main prayer. Further, considering the limitation period, it is within limitation, and it is always open to the respondents to raise the issue before the Trial Court during the course of trial.

22. Further, the learned counsel for the third respondent

relying on the judgment of the Hon'ble Supreme Court in **REVAJEETU BUILDERS AND DEVELOPERS VS. NARAYANASWAMY AND SONS AND OTHERS [2009 (10) SCC 84]** would contend that the application is only for the purpose of protracting the proceedings. Paragraph nos.29, 33 and 39 of the said judgment are reads as under:

"29. We are tracing the legislative history, objects and reasons for incorporating Order VI Rule 17 not because it is necessary to dispose of this case, but a large number of applications under Order VI Rule 17 are filed and our 5 AIR 1922 PC 249 courts are flooded with such cases. Indiscriminate filing of applications of amendments is one of the main causes of delay in disposal of civil cases. In our view, clear guideline may help disposing off these applications satisfactorily.

33. In a recently published unique, unusual and extremely informative book "Justice, Courts and Delays", the author Arun Mohan, a Senior Advocate of the High Court of Delhi and of this Court, from his vast experience as a Civil Lawyer observed that 80% applications under Rule

VI Order 17 are filed with the sole objective of delaying the proceedings, whereas 15% application are filed because of lackadaisical approach in the first instance, and 5% applications are those where there is actual need of amendment. His experience further revealed that out of these 100 applications, 95 applications are allowed and only 5 (even may be less) are rejected. According to him, a need for amendment of pleading should arise in a few cases, and if proper rules with regard to pleadings are put into place, it would be only in rare cases. Therefore, for allowing amendment, it is not just costs, but the delays caused thereby, benefit of such delays, the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken into consideration while awarding the costs.

39. The rule, however, is not a universal one and under certain circumstances, such an amendment may be allowed by the court notwithstanding the law of limitation. The fact that the claim is barred by law of limitation is but one of 8 (1880) 19 QBD 394: 56 LJ QB 621 the factors to

be taken into account by the court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the court if the amendment is required in the interests of justice."

23. In view of the discussions made above, the Civil Revision Petition is disposed of with the following directions:

- (i) The order passed by the Trial Court in dismissing the amendment petition is set aside except for the prayer of permanent injunction.
- (ii) Considering the findings of the Hon'ble Supreme Court, a direction is issued to the petitioners to carry out the amendment within a period of two weeks from the date of receipt of a copy of this order and a further direction is issued to the Trial Court to dispose of the suit within a period of six months.

No costs. Consequently, connected civil miscellaneous petitions are closed.

05.07.2019

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

The III Additional District Judge
III Additional District Court
Tiruvallur at Poonamallee.



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