



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2019

DELIVERED ON : 03.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) Nos.1626 and 1627 of 2015

and

M.P. (MD) No.1 of 2015

1.Kubbammal
2.P.Velmurugan
3.P.Sankar

... Petitioners/Petitioners/Plaintiffs
in both C.R.Ps.

Vs.

N.Santhanamuthu

... Respondent/Respondent/Defendant
in both C.R.Ps.

Common Prayer: These Civil revision petitions filed under Article 227 of the Constitution of India, to set aside the fair orders dated 26.06.2015 passed in I.A.Nos.449 and 450 of 2015 in O.S.No.447 of 2012 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioners (In both C.R.Ps.) : Mr.V.Meenakshisundaram
For Respondent (in both C.R.Ps.) : Mr.S.Xavier Rajini

COMMON ORDER

Heard Mr.V.Meenakshisundaram, learned counsel appearing for the petitioners and Mr.S.Xavier Rajini, learned counsel appearing for the respondent.

2.These Civil Revision Petitions have been filed against the orders passed in I.A.Nos.449 and 450 of 2015 in O.S.No.447 of 2012 dated 26.06.2015 on the file of the learned Principal District Munsif, Nagercoil.

3.The petitioners herein are the plaintiffs and the respondent herein is the defendant in the suit. The petitioners have filed a suit in O.S.No.447 of 2012 seeking for a prayer of declaration and for recovery of B schedule property and for mandatory injunction to remove the construction in the B schedule property. The petitioners filed petitions in I.A.Nos.449 and 450 of 2015 seeking permission to amend the plaint and to reopen the case. The trial Court dismissed both the petitions. Against which, the petitioners have come forward with the present revision petitions.



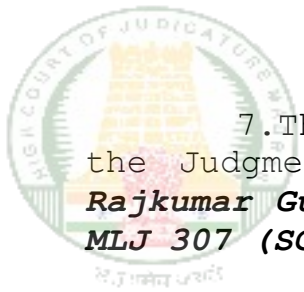
4. On the side of the petitioners, it is stated that the petitioners wanted to amend the survey number of the suit. It is stated that the learned counsel for the petitioner instead of survey no. 1179 has mistakenly mentioned survey no. 1379. This discrepancy is only with regard to old survey number and the new survey number is the same. It is stated that some portion of the plaint is to be deleted and 3 to 6 lines are to be inserted regarding the title. It is stated that the amendment will not change the character of the suit and there is no question of limitation and to avoid multiplicity of proceedings, this amendment is to be allowed and the case is to be reopened.

5. On the side of the respondent, it is stated that the petitioners seek amendment not only in the survey number but also with regard to the title. In the original suit, the first petitioner traced her title stating that the property belonged to her husband who got the property by way of a settlement deed dated 31.01.1963 executed by his grandmother Madi Pillai but now the petitioners wanted to delete this line and want to insert another story stating that the father of the petitioners purchased the property from one Nallakannu through a document number 2109/1109. This amendment will change the entire nature of the case and both the documents settlement deed no. 366/1963 and document no. 2109/1109 are two different documents and they are not relevant to each other. On the basis of the plaint averments, the respondent has filed written statement and the entire trial was over and the suit was posted for arguments and the petitioner wants to delete his earlier statement in the plaint and also in the deposition.

6. On the side of the respondent, it is stated that an amendment can be made only before the trial Court and the proposed amendment should not change the nature of the suit. In support of his contention, the Judgment passed by this Court in the case of **Ilayaperumal v. M/s. Madras Cements** reported in **2013-5 L.W. 488**, wherein it is stated as follows:

"A comparative study of the original written statement and the amendment sought to be made therein would show that the second defendant wants to take totally a contradictory stand and what he has admitted originally is sought to be denied by way of such amendment. Whether such amendment is permissible is the question that arises for consideration in this Civil Revision Petition.

There is no quarrel about the said proposition. But at the same time, if the inconsistent plea happens to be destructive in nature of the original plea, then such plea cannot be permitted by way of amendment as held in Gautam Sarup's case."



7. The learned counsel appearing for the respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Rajkumar Gurawara (Dead) v. S.K. Sarwagi & Co.**, reported in **(2008) 8 MLJ 307 (SC)**, which reads as follows:

"In order to consider whether the appellant/plaintiff has made out a case for amendment of his plaint, it is useful to refer Order VI Rule 17 CPC 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 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:

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."

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this rule is subject to proviso appended therein.

Though even after commencement of the trial, parties to the proceeding are entitled to seek amendment, in the light of the factual details such as clear information in the reply notice prior to the filing of the suit and specific plea in the written statement of D-1 which contained details of Government Orders leasing out the suit property in favour of D-2, the action of the plaintiff at the stage of argument can not be permitted. Admittedly, the plaintiff failed to adhere to the said recourse at the appropriate time. Further it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of amendment for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the



amendment would result introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation."

8. The learned counsel appearing for the respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Mohinder Kumar Mehra v. Roop Rani Mehra and Others** reported in (2018) 2 Supreme Court Cases 132, which reads as follows:

"17. Although Order VI Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of Proviso to the fact that no application for amendment shall be allowed after the trial is commenced..... In a suit when trial commences? Order XVIII of the C.P.C. deal with "Hearing of the Suit and Examination of Witnesses". Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues.....

22. The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced."

9. The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **N. Sankara Iyer and Ors. v. M. Sankarasugumar and Ors.**, reported in 2019 (1) CTC 202, which reads as follows:

"Normally a pre-trial amendment will be liberally allowed. However, there are exceptions. An amendment cannot be made to take away the effect of an admission. Also, an amendment cannot be made where it is not done in good faith. The present amendment which has been filed by the 1st Respondent/Plaintiff is solely to retract the changes the 1st Respondent/Plaintiff made, for the purpose of numbering the suit. Having got the suit numbered, he now wants to retract the amendments. Moreover, notices were issued to the defendants and they have made application for rejection on the basis of the plaint.

11. Now the 1st Respondent/Plaintiff wanted to withdraw the entire Para 11 of the plaint and insert the new amendment which he has sought for. A careful



reading of the said amendment clearly shows the 1st Respondent/Plaintiff wants to undo the change made which was done to get the suit numbered. The plaintiff cannot recklessly make and withdraw allegations from time to time. The nature of the suit will completely change. The defendants are also clearly prejudiced. The Trial Court has failed to consider all these aspects and has simply allowed the amendment application taking a lenient view. The Trial Court failed to note that only the bonafide mistake in pleading can be corrected by seeking amendment, but the present amendment sought for lacks bonafides."

10.It is seen that the plaintiffs' original pleadings is that the property is inherited from the grandmother. Now the claim of the plaintiff is that father purchased the property from one Nallakannu. Both these statements are contradictory to each other. The respondent prepared a written statement in accordance with the original plaint. Already entire trial is over and the case was posted for arguments. Even in the petition, it is admitted that the case is at the stage of the arguments.

11.The reasons stated in the petition for amendment is that due to inadvertence, the counsel has mistakenly written the wrong survey number. No reasons for the delay is stated in the petition. The claim of the petitioners is that the father inherited the property from his grandmother. Now the petitioner want some lines to be inserted that the property is purchased from Nallakannu and this amendment will completely change the nature of the suit. The written statement was filed on the basis of the original pleadings. Entire evidence was taken on the original pleadings and the trial was completed and the petitioners want to create a new case in the original plaint.

12.In the above circumstances, there is nothing sufficient enough to interfere in the orders passed by the lower Court. Hence, these Civil Revision Petitions are dismissed by confirming the orders passed in I.A.No.449 and 450 of 2015 in O.S.No.447 of 2012 dated 26.06.2015 on the file of the learned Principal District Munsif, Nagercoil. No Costs. Consequently, M.P.(MD) NO.1 of 2015 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar()



Mrn
To

1. The District Munsif cum Judicial Magistrate No.I,
Usilampatti.

+1. C.C. to Mr.S.Xavier Rajini Advocate SR.No.59028

+1. C.C. to Mr.D.Nallathambi Advocate SR.No.58785

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