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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.02.2019

DELIVERED ON : 12.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.989 of 2015

1.Amirtham
2.Vasanthaguru
3.James

.. Petitioners/Petitioners/Plaintiffs

Vs.

Senthil Kumar @ Veerakumar

.. Respondent/2nd Respondent/2nd Defendant

Prayer : This Civil revision petition is filed under Article 227 of Indian Constitution, to set aside the fair and decretal order dated 15.12.2014 passed I.A.No.104 of 2014 in O.S.No.12 of 2003 on the file of the District Munsif cum Judicial Magistrate Court, Andipatti.

For Petitioners	: Mr.M.Saravanan
For Respondent	: Mr.M.Kannan

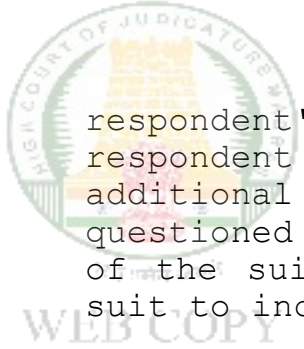
ORDER

Heard Mr.M.Saravanan, learned counsel appearing for the petitioners and Mr.M.Kannan, learned counsel appearing for the respondent.

2.This petition has been filed against the order passed in I.A.No.104 of 2014 in O.S.No.12 of 2003 dated 15.12.2014 on the file of the District Munsif cum Judicial Magistrate Court, Andipatti.

3.The petitioners are the plaintiffs and the respondent is the second defendant in the suit. The petitioners herein have filed a suit in O.S.No.12 of 2003 before the learned District Munsif cum Judicial Magistrate, Andipatti for a prayer of injunction. In the suit, the petitioners have filed a petition in I.A.No.104 of 2014 seeking permission to amend the plaint. The petition was dismissed by the trial Court. Against the order of dismissal, the petitioners have come forward with this revision petition.

4.On the side of the petitioners, it is stated that the title of the petitioners was not denied in the written statement. The only contention of the respondent is that the property belonged to the



respondent's grandfather. I.A.No.199 of 2012 was filed by the respondent to receive additional written statement and in the additional written statement, the title of the plaintiffs was questioned and it was stated that the second defendant is the owner of the suit property and hence, the plaintiffs have to amend the suit to include the prayer for declaration of title.

5. On the side of the petitioners, it is further stated that the petition filed by the petitioners was dismissed by the trial Court only on the ground of delay. But the trial Court has made an observation that the amendment sought for by the plaintiffs will resolve the actual issue in dispute between the parties and that the amendment sought for will not change the nature and character of the suit. The respondent has taken 12 years to file the additional written statement whereas the petitioners have taken only four months to file this petition. It is further stated that whether the prayer sought for is barred by limitation or not can be decided at the time of trial and the other side can be given opportunity to file a reply and for the delay, the respondents can be compensated by way of costs.

6. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **E.K.Palanisamy v. Manonmani and Others** reported in **2014 (3) MWN (Civil) 806**, which reads as follows:

"Amendment of plaint can be filed after commencement of trial subject to fulfillment of "due diligence"-There is no total bar even after amendment to Code on 1.7.2002-Amendments, which may be necessary for determining real question in controversy between parties, should be allowed at any stage of proceedings in interest of justice- purpose of amendment is to minimize litigation-Though amendment cannot be claimed as matter of right, Courts while deciding prayers should not adopt hyper-technical approach-Order allowing amendment by Trial Court upheld-Civil Revision Petition dismissed."

7. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **K.Ganapathy v. Sakthi Sugar Limited** reported in **(2012) 6 MLJ 345**, which reads as follows:

"An Amendment in pleading can be allowed at any stage and a Court of Law has the discretion to allow the amendment in the interest of justice. The words 'at any stage' means at any stage before the Judgment is pronounced."

8. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **Chitra v. Kannan** reported in **(2015) 3 MLJ 668**, which reads as follows:

"Even without such a plea, based on the denial of title made by the defendant, the plaintiff can adduce evidence in support of her claim that she derived valid title. Besides throwing light on



the issue, the proposed amendment would lend help to the Court to know the real issue in controversy and decide the same in the present suit itself thereby avoiding multiplicity of proceedings."

9. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **Hi. Sheet Industries v. Litelon** reported in **2006 (5) CTC 609**, which reads as follows:

"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.

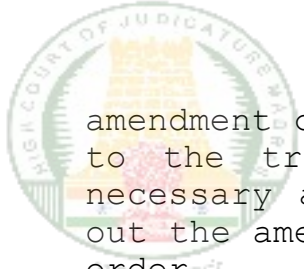
(2) According to the proviso to sub-section (2) of Section 40 the Specific Relief Act, the Court has no option except to allow the amendment for adding a prayer for damages. This being the provision of law, the same should be allowed.

(3) The proviso to Order 6 Rule 17 of Act 22 of 2002 is applicable to the pleadings instituted with effect from 01.07.2002 and not to the pleadings instituted prior to 01.07.2002 and while considering the proviso to Order 6 Rule 17, the Court has to examine in detail and commencement of trial must be understood as final hearing of the suit i.e., examination of witnesses, filing of documents, addressing of arguments etc., and the Court should not forget its unfettered discretion to allow the amendment after applying itself the judicial discretion, if there is no negligence on the part of the party.

(4) Before parting with the decisions, we are tempted to cite a paragraph from a case *Ma Shwe Mya v. Maung Mo Hnaung* 21 "All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit." (emphasis supplied) Keeping the above principle, the Court of Law has to dispense the justice.

(5) Therefore, we hold that the impugned order, disallowing the amendment, is liable to be set aside for more than one reason.

(6) In view of our aforesaid discussion, we are of the view that the learned Counsel for the petitioners is correct in rejecting the application for amendment of the plaint. Accordingly, the order of the trial Court in I.A.No.589 of 2002 in O.s.No.45 of 1996 is set aside and the application for



amendment of plaint is allowed. The plaintiff is directed to proceed to the trial Court forthwith and take immediate steps for the necessary amendment as mentioned in the said application and carry out the amendment within a period of one month from the date of this order.

We cannot ignore the facts and circumstances of this case and, accordingly, we direct the trial Court to dispose of the suit itself within a period of three months from the date of communication of this order to it, as already there is a considerable delay by now. There shall be no order as to costs. Consequently, the connected C.M.P.No.8415 of 2003 is closed."

10. In support of this contention, the Judgment passed by the Hon'ble Supreme Court in the case of **Puran Ram v. Bhaguram & another** reported in **2008 (2) CTC 224** is cited.

11. On the side of the petitioners, it is further stated that no prejudice will be caused to the parties, if an opportunity is given to both the parties.

12. On the side of the respondent, it is stated that any amendment should be carried out within three years and that the suit was filed by the plaintiffs only for a prayer of injunction. In the year 2003 itself, the written statement was filed denying the title. In the written statement itself, the respondent had stated that the property is the ancestral property of the father of the second defendant. The plaintiffs are claiming title only through an unregistered sale deed and the sale deed was also denied by the second defendant. When the second defendant claim ownership in the written statement filed in the year 2003 itself, the plaintiffs cannot take advantage of the additional written statement and the relief sought for is time barred. When there is a question of limitation, there cannot be an amendment for a prayer bared by limitation and that this amendment would be a prejudice to the rights of the respondent.

13. The learned counsel appearing for the respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of **L.C.Hanumanthappa (since Dead) v. H.B.Shiva Kumar** reported in **(2016) 1 Supreme Court Cases 332**, which reads as follows:

"13. We have heard learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction.

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16th May, 1990 when in the very first written statement the defendant had pleaded, in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that



remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order VI Rule 17 of the Code of Civil Procedure.

22. In *K. Raheja Constructions Ltd. & Anr. v. Alliance Ministries & Ors.*, 1995 Supp. (3) SCC 17, this Court was seized with a belated application to amend a plaint filed for permanent injunction. Seven years after it was filed, an amendment application was moved seeking to amend the plaint to one for specific performance of contract.....

23. Similarly, in *Vishwambhar & Ors. v. Laxminarayan (Dead) through LRs & Anr.*, (2001) 6 SCC 163, in a suit originally filed for recovery of possession, an amendment was sought to be made after the limitation period had expired, for a prayer of declaration that certain sale deeds be set aside."

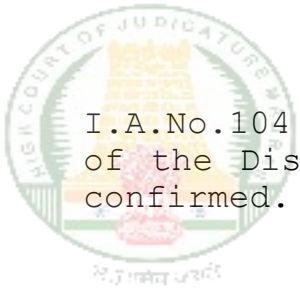
14. The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of ***Ferani Hotels Private Ltd., v. K. Raheja Development (KRDC) and another*** reported in **2014 (2) CTC 655**, which reads as follows:

"As contended by the learned Senior Counsel appearing for the petitioner/defendant, even as per the averments of the Plaint and the accompanying affidavit filed by the respondent/plaintiff, the amendment sought for is after a period of three years limitation and therefore, in the light of the decisions rendered by the Hon'ble Supreme Court, permitting to make such an amendment under Order 6, Rule 17, C.P.C., would be prejudicial to the rights of the petitioner, as the relief sought for is barred by limitation."

15. On the side of the petitioners, it is stated that only in the additional written statement, the second defendant has questioned the title of the plaintiffs and that the second defendant admitted the signature in the sale deed. The only contention is that the signature was obtained in a blank paper and that the trial Court can decide the question of limitation after the trial. On the side of the respondent, it is stated that the plaintiffs have to stand on their own legs and they cannot pick holes into the case of the defendants.

16. The suit is filed in the year 2003 and the written statement of the first defendant is filed in the year 2003 itself. Even in the written statement, the first defendant has denied the sale deed and claimed title over the property. Though the respondent denied the title of the plaintiffs in the year 2003 itself, the plaintiffs have come forward with this petition only in the year 2014 after the expiry of 11 years. This inordinate delay is not explained by the petitioners. If this petition is allowed, it will cause further delay in the proceedings of the case.

<https://hcservices.ecourts.gov.in/hcservices/>
In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is dismissed and the order passed in



I.A.No.104 of 2014 in O.S.No.12 of 2003 dated 15.12.2014 on the file of the District Munsif cum Judicial Magistrate Court, Andipatti is confirmed. No Costs.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate, Andipatti.

+1. C.C. to M/S.R.SUBRAMANIAN, Advocate SR.No. 53821

+1. C.C. to M/S.M.KANNAN, Advocate SR.No. 53438

C.R.P. (PD) (MD) No.989 of 2015

12.03.2019

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