**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reserving the Judgment	Date of Pronouncing the Judgment
29.07.2019	19.08.2019

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CORAM**THE HONOURABLE MR. JUSTICE R.PONGIAPPAN****CRP (MD) Nos.853 to 855 of 2019****and****C.M.P (MD) No.5068 of 2019**

1.C.Periyasamy
2.Meenal
3.Subbiah @ Mani
4.Muthuvelu Servai
5.Kanagam @ Karuppayee Nachiar

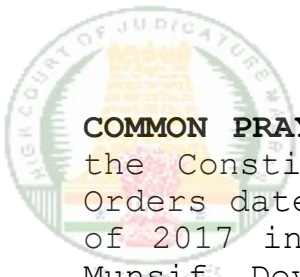
...Petitioners
(in all CRPs)

Vs .

Kaliammal @ Chellammal (Died)

1.Poomathi
2.P.Kathiravan
3.S.Senthil
4.S.Jegadeesh
5.Ramasamy
Lakshmanan (died)
6.Karuppiah
7.Thiagarajan
8.Ramanathan
9.Ganapathy
10.Karu.Chandrasekaran
11.Meenakshi
12.Annapoorani
13.Kaliammal
14.Kunjaran
15.Subbammal
16.S.Gandhimathiyammal
17.K.Pooranam
18.KR.Valarmathi
19.C.Karuppu
20.C.Nityanandam
21.K.Chinnasamy
22.L.Ramu
23.M.Banumathi
24.Vijaya
25.Sigappy Nachiyar

....Respondents
(in all CRPs)



COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the Fair and Executable Orders dated 21.03.2019 made in I.A.Nos.1 to 3 of 2019 in I.A.No.982 of 2017 in O.S.No.19 of 2015 respectively on the file of District Munsif, Devakottai.

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For Petitioners : Mr.R.Suriya Narayanan

For R-1 : Mr.H.Rahamadulla
for Mrs.P.Kalairasi Bharathi
(in all CRPs)

COMMON ORDER

These civil revision petitions have been filed to set aside the Fair and Executable Orders dated 21.03.2019 made in I.A.Nos.1 to 3 of 2019 in I.A.No.982 of 2017 in O.S.No.19 of 2015 on the file of learned District Munsif, Devakottai.

2.The petitioners are the respondents 1, 5, 6, 14 and 15 in I.A.No.982 of 2017 and defendants 1, 5, 6, 14 and 15 in O.S.No.19 of 2015 on the file of the learned District Munsif, Devakottai. Before the trial Court, the first respondent in this civil revision petitions, namely Poomathi filed three applications, in which one is for amending the plaint and another one is to amend the petition and the last one is for re-opening the application, which was filed already to appoint the Advocate Commissioner and as of now the same was closed after receiving the report. The above three applications assigning the case numbers as I.A.Nos.1, 3 and 2 of 2019 respectively. After elaborate enquiry, the learned District Munsif, Devakottai, had allowed all the three applications and permitted the first respondent to amend the plaint filed in O.S.No.19 of 2015, to amend the application filed in I.A.No.982 of 2017 and to re-open the application i.e., I.A.No.982 of 2017. Aggrieved over the said findings, the petitioners who are the defendants 1, 5, 6, 14 and 15 in the suit, are before this Court, seeking the relief to set aside the orders passed by the learned District Munsif, Devakottai, in the above three applications.

3.It is the case of the petitioners that the first respondent/plaintiff filed a suit as against the petitioners/defendants and other respondents for the relief of declaration declaring that the suit schedule properties are the absolute properties of the plaintiffs. Consequently, for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule properties. Further, in the said suit, she prayed to set aside the sale deed dated 29.10.2009 executed by the defendants 1 to 4 in favour of the 13th defendant. Further, she prayed to set aside the sale deed dated 04.06.2005 executed by the 26th defendant in favour of the 14th defendant in respect to 9th item of 'A' schedule property. In the same way, to set aside the sale deed dated 25.08.2008 in which the defendants 1, 3, 4 and 5 executed a sale



deed in favour of the 6th defendant. Pending the above suit, on the application filed in I.A.No.982 of 2017 by the first respondent/second plaintiff, the learned District Munsif, Devakottai, had appointed the Advocate Commissioner and directed to visit and measure the suit properties with the help of Surveyor. The Advocate Commissioner after visiting the suit properties filed a report that some of the suit properties are not identified, since in the plaint the survey number and extent of the suit properties mentioned by the plaintiffs, are not correlated to the revenue records. Only after seeing the said report, the first respondent/second plaintiff in the suit filed the above three applications for amending the plaint, for amending the petition which was filed for appointment of Advocate Commissioner and also for reopening the application.

4.The learned District Munsif, Devakottai, after giving sufficient opportunity to either parties allowed the applications as prayed by the first respondent/second plaintiff and as of now as per the order dated 21.03.2019, amendment has also been carried out. Challenging the said orders passed by the learned District Munsif, Devakottai in I.A.Nos.1 to 3 of 2019 as already referred above, the petitioners/respondent 1, 5, 6, 14 and 15 are before this Court with these present civil revision petitions.

5.The learned counsel appearing on behalf of the petitioners would contend that the amendment sought by the first respondent/second plaintiff would change the character of the suit. The first respondent/second plaintiff introduced the new case and new cause of action to the suit already filed.

6.Per contra, the learned counsel appearing on behalf of the first respondent would contend that only for identifying the suit properties the first respondent has filed the above three applications and she has not introduced any new fact by way of filing the applications under Order 6 Rule 17 of C.P.C.,

7.Upon considering the arguments advanced by either side, it would admit that the suit properties were purchased by the mother of the deceased plaintiff, viz., Meenakshi vide two sale deeds dated 11.09.1923 and 21.12.1922. Now on going through the copies of the sale deeds referred by the plaintiffs, it is clear that the mother of the deceased plaintiff, viz., Meenakshi, purchased the suit properties only by mentioning the four boundaries of the suit properties. In fact, in the above referred sale deeds the survey numbers and extent of the suit properties have not been clearly mentioned. At the time of filing the suit, the plaintiffs have described the suit properties in the plaint as stated in the above referred two sale deeds.

8.Only when at the time after seeing the report filed by the Advocate Commissioner, it came to the knowledge of the first respondent that the identification of the properties mentioned in



the plaint, is not clear. So, for identifying the correct properties, amendment in the plaint, is necessary. Further, he decided that since all the properties referred in the plaint are not visited by the Advocate Commissioner, it is necessary to visit all the suit properties by the Advocate Commissioner.

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9. Only in the said circumstances, the first respondent filed the application before the trial Court for appointment of Advocate Commissioner to visit the suit properties with the help of the Surveyor. Now on going through the paragraph in respect to the amendment required by the plaintiffs, she intended to mention the survey number to the properties purchased by the mother of the deceased plaintiff, viz., Meenakshi. Further she has attempted to change the extent of certain suit properties. While at the time of disposing the application filed by the first respondent, the trial Court has clearly held that for identifying the properties the proposed amendment is necessary and thereby, the petitions filed by the first respondent/plaintiff are having the merits. At this juncture, it is relevant to see the judgment of **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others** reported in **(2009) 10 SCC 84**, wherein our Hon'ble Apex Court while at the time of disposing the civil appeal, has observed as follows:-

Factors to be taken into consideration while dealing with applications for amendments:-

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

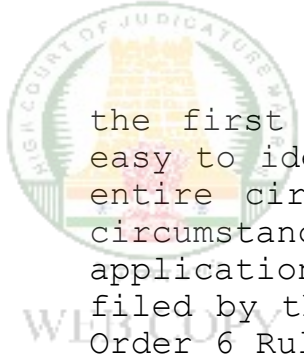
(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multi-plelitigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

10. So categorically the observation of our Hon'ble Apex Court is clear that if the amendment constitutionally or fundamentally changes the nature and character of the case, the same should not be allowed. In this case, mentioning the survey number to the suit properties, is not at all changed the character of the case. It does not say that the plaintiffs introduced new case. If the applications filed by



the first respondent/ second plaintiff is not allowed, it is not easy to identify the suit properties at the time of execution. The entire circumstances would show that only after knowing the said circumstances, the first respondent/second plaintiff filed an applications for amendment. More than that, as of now, the suit filed by the first respondent/second plaintiff is posted for trial. Order 6 Rule 17 is very clear that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a 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. The second thing to be noted is for the reason that the plaint is amended, the petitioners are no way prejudiced.

11.Apart from that since the applications are filed immediately after seeing the report filed by the Advocate Commissioner, it cannot be held that those applications are filed belatedly by the first respondent/ second plaintiff. It is obvious that if the properties are not identified during the time of trial, it will create multiplicity of proceedings. Further, it cannot be held that the relief sought by the first respondent/second plaintiff before the trial Court is a time barred one. In general, if amendment necessitates because of the subsequent event, the same deserves to be allowed. Therefore, it is needless to say that for better adjudication and also for identification of the properties, the amendment sought by the first respondent/plaintiff is necessary and the same was considered favorably. So, interference is not necessary.

12.In view of the above observations, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The District Munsif, Devakottai.

+1 CC to M/s.R.SURYA NARAYANANAN, Advocate SR-82235.

Common Order Made in
CRP (MD)Nos.853 to 855 of 2019
and
C.M.P (MD) No.5068 of 2019

CS(30.08.2019) 5P 3C