



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.09.2019

DELIVERED ON : 26.11.2019

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P.(NPD) (MD)No.2354 of 2014

and

M.P.(MD)No.1 of 2014

Murugaiah .. Petitioner/Petitioner/Plaintiff

Vs.

1.Selvam

2.Meenakshi

3.Chitra @ Geetha

4.Ezhumalai

5.Rasu

6.Subramanian @ Bose

.. Respondents/Respondent/  
Defendants

**Prayer :** This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.361 of 2013 in O.S.No.9 of 2009 dated 22.08.2014 on the file of District Munsif cum Judicial Magistrate, Keeranur, Pudukottai District.

For Petitioner

: Mr.N.Balakrishnan

For Respondents

: M/s.Porkkodi Kannan for  
M/s.Polax legal Solutions

**ORDER**

Heard the learned counsel on either side.

2. This petition has been filed against the order passed in I.A.No.361 of 2013 in O.S.No.9 of 2009 dated 22.08.2014 on the file of District Munsif cum Judicial Magistrate, Keeranur, Pudukottai District.

<https://hdservices.courts.gov.in/hdservices/>



3. The petitioner is the plaintiff. The respondents are the defendants in the suit in O.S.No.9 of 2009.

4. The petitioner filed a suit for a prayer of right of pre-emption to purchase the suit properties. The plaintiff and the defendants 1 to 4 are co-sharers in the 'B' schedule property. In that suit, the petitioner filed a petition in I.A.No.361/2013 under Order 6 Rule 17 seeking the leave of the Court to amend the plaint and the same was dismissed by the Trial Court against which the petitioner filed this revision.

5. The substance of the petition in I.A.No.361/2013 is as follows:-

The petitioner filed a suit for a right of pre-emption to purchase the suit property. It is stated that there was no partition in the joint family property including the suit property and that the petitioner was now advised to seek for a relief of partition as an alternative relief to avoid technical objection and to avoid multiplicity of proceedings. For this purpose, all the joint family properties are to be included in the plaint accordingly.

6. The substance of the counter filed by the respondents is as follows:-

The petitioner cannot claim a relief of partition as an alternative relief for prayer of right of pre-emption. It is stated that one Sanga Gounder was enjoying the 'B' schedule property and that after his demise, as per the oral partition, the suit property was allotted to Adaikkan @ Chinnappa and he was enjoying the property as his individual property. Thereafter, he died on 23.01.2008 and the defendants are enjoying the property as his legal heirs. The defendants 1 to 4 sold item No.1 of the suit property in favour of defendant No.5 and they sold item No.2 in favour of the 6<sup>th</sup> defendant on 13.03.2008 and they sold Item Nos.3 & 4 in favour of the 7<sup>th</sup> defendant through registered sale deeds. Though written statement was filed on 04.09.2009, the plaintiff did not prefer this petition till 17.06.2017 and that the prayer now sought to be impleaded will change the value of the suit property and will also change the entire character of the case and hence, the petition is to be dismissed.

7. On the side of the revision petitioner, it is stated that trial has not commenced and pre-trial amendment was permitted. Changing the relief will not change the character of the suit. A judgment in the case of **Abdul Rdhman and Another Vs. Mohd. Ruldu and Others** reported in **2012 (5) CTC 803** was submitted by the learned counsel for the revision petitioner for supporting his contention.



" Adding of relief would avoid multiplicity of litigation - Held, change in nature of relief ought not to be considered as change in nature of suit and power of amendment to be exercised in larger interests of doing full and complete justice between parties - Order of Trial Court and High Court dismissing Application for amendment, set aside - Appeal allowed."

8. A judgment in the case of **N.J.Senthilkumar Vs. N.B.Subash** reported in **2010 (4) TLNJ 311 (Civil)** was also submitted by the learned counsel for the revision petitioner for supporting his contention.

"10.The Hon'ble Division Bench of this Court in the judgment reported in 2010 (2) CTC 609 in (Kdeia Overseas Ltd Vs. Satellite Town Development Pvt. Ltd.,) held that the suit for bare injunction could be amended into a suit for specific performance when necessary averments regarding the readiness and willingness to perform the contract was made in the original plaint. In the said judgment, it has been held as follows:-

"24. A perusal of paragraph 12 and 13 of the plaint would disclose that averments have been made to that effect that the plaintiffs are ready and willing to perform their part of obligations, but the defendants are evading it. It is further averred that the plaintiffs had paid a sum of Rs.2,00,00,000/- towards part performance of their obligation and therefore, they are entitled to seek for specific performance and that they have also consciously reserved their right to file a separate suit for specific performance against the defendants. Therefore, necessary averments for filing a suit for specific performance are available in the plaint. The plaint was verified on 07.02.2006.

26. A perusal of the averments made in the affidavit filed in support of the Application for amendment of the plaint would disclose that the averments made in the plaint are repeated and reiterated and no new averments have been made and necessary averments are available for the relief of specific performance.

27.The relief sought for by the plaintiffs by way of amendment is for



WEB COPY

appropriate direction directing the defendants to jointly execute the sale deed pertaining to the schedule mentioned properties and they did not seek for recovery of possession of the same. Therefore, the suit in any event cannot be construed as a suit for land.

29. This Court, taking into consideration the ratio laid down in the above cited decisions and the facts of this case as available through pleadings and the averments made in the Application and the counter affidavit is of the considered opinion that the amendment of plaint sought for by the appellants herein in no way alter the nature and character of the suit. The issue with regard to the belatedness on the part of the appellants/plaintiffs to take out the above said Application and lack of bona fide on their part are disputed questions of fact which can be thrashed out only during the course of trial. This Court is also of the view that no prejudice will be caused to the respondent/defendant in the event of amendment being allowed."

In this case also, as stated supra, necessary averments for the suit for specific performance have been stated in the plaint and in para 10 of the amount to get his property registered and in paragraph 11 it has also been stated that the plaintiff has always been ready and willing to perform his part of the contract. Further, in the application for amendment, no new facts are stated to substantiate the case for specific performance and therefore, the facts of this case is similar to the case referred in (2010 2 CTC. 609) as held by the Division Bench of this Court and in such a case, the application can be allowed."

9. A Judgment in the case of **N.Shanmuganathan (Died) Lrs of N.S.Shanmuganathan 1.S.Vasanthan2.Indrani 3.S.Ranjini Vs. Sampooran and others** reported in **2019 (3) CTC 71** was also submitted by the learned counsel for the revision petitioner for supporting his contention.

" 12 Order 6, Rule 17 of the Civil Procedure Code empowers the Court to allow either of the parties to amend their pleadings at any stage for the purpose of determining the real questions in controversy between the parties. Some of the basic principles which has been laid down and reiterated



in various Judgments of the Hon'ble Apex Court are briefly thus:

1) The amendments sought is for proper and effective adjudication of the case.

2) The application for amendment should be bona fide.

3) The amendment should not cause serious prejudice to the either side.

4) Refusal of the Application for amendment would render injustice to the party or lead to multiple litigations.

5) The proposed amendment should not constitutionally or fundamentally change the nature and character of the case."

10. On the side of the respondents, it is stated that the petitioner has come forward with this petition, after a lapse of 4 years, from the date of filing of the written statement, only with an intention to drag on the case.

11. The claim of the plaintiff is that they have undivided hindu joint family properties. The claim of the defendant is that there was an oral partition and the suit property was allotted to the share of the defendant. It is further stated that the defendants 1, 3 & 4 sold the properties in item Nos.1 to 3 to the defendants 5, 6 and 7.

12. The petitioner claim right of pre-emption and has filed this suit. The case of the petitioner is that due to subsequent events and to be on the safer side, the petitioner sought for an alternative prayer of partition.

13. The contention of the respondents is that these amendment, will change the entire case of the plaintiff and that the only course available for the petitioner is to withdraw the suit and to file another suit for partition and that allowing this petition will cause further delay in the suit proceedings.

14. A perusal of the records reveals that the petitioner wants to make some amendment in the plaint and he wants to include some more properties in the list of suit schedule properties.

15. It is seen that the defendants 1 to 4 have sold some of the properties. The claim in the suit property is a right of pre-emption of the undivided share of the defendant. Whether the properties are still undivided and whether the plaintiff is havinhg a right of pre-emption can be decided only after the trial.



16. If the petition is dismissed, the plaintiff will be constrained to file a fresh suit which will cause multiplicity of cases. The claim of the petitioner in the amendment petition is a relief of partition to enable him to sough for a right of pre-emption. Hence, the amendment to be carried out will not change the nature of the case. An opportunity for the petitioner to putforth his case has to be given.

17. In the above circumstances, instead of seeking partition as an alternative prayer, the petitioner is permitted to seek for a prayer of partition as an additional prayer on payment of necessary court fee.

18. With the above observation, this Civil Revision petition is allowed by setting aside the order passed in I.A.No.361 of 2013 in O.S.No.9 of 2009 dated 22.08.2014 on the file of District Munsif cum Judicial Magistrate, Keeranur, Pudukottai District. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

The District Munsif cum Judicial Magistrate,  
Keeranur, Pudukottai District.

+1 cc to Mr.N.Balakrishnan , Advocate SR.No.102072

order made in  
C.R.P. (NPD) (MD) No.2354 of 2014

and  
M.P. (MD) No.1 of 2014  
**26.11.2019**

KM/(18.11.2019) 6P 3C