

C.M.P.No.19830 of 2017  
in  
AS.No.500 of 2017

**S.M.SUBRAMANIAM, J.**

The Civil Miscellaneous Petition is filed under Order VI Rule 17 of C.P.C read with 151 C.P.C, seeking amendment in the plaint.

2. The petitioner/appellant has filed this petition to amend the prayer in the plaint, so as to declare the settlement deed dated 09.11.2000 as null and void. Admittedly, the original suit was filed for partition and separate possession. The suit was dismissed by the Trial Court. Thereafter, the appeal suit was filed by the petitioner/appellant. During the pendency of the appeal suit, the present miscellaneous petition is filed, seeking amendment of the plaint.

3. The learned counsel for the petitioner has mainly contended that the limitation cannot be held against the petitioner and therefore, the amendment petition is filed, during the pendency of the first appeal. Further, it is stated that the petitioner has enumerated the facts

regarding the settlement deed dated 09.11.2000 in the plaint itself. When the averments are very much available in the plaint itself, then necessary amendments can be made during the pendency of the suit or during the pendency of the first appeal and there is no impediment for such amendment. The learned counsel for the petitioner solicited the attention of this Court with reference to the averments made in Paragraph No.9 of the plaint which states that "it deals with the settlement". Relying on the said factual position, the learned counsel for the petitioner relied on the judgment of the Supreme Court of India, in the case of **PIRGONDA HONGONDA PATIL vs. KALGONDA SHIDGONDA PATIL** reported in **1957 SCR 595 : AIR 1957 SC 363**, the relevant paragraph No.7 is extracted hereunder:

*7. Both these circumstances were fully considered by the learned judges of the High Court. It is worthy of note that the period of limitation for a suit under Order 21 Rule 103 of the Code of Civil Procedure, namely, one year from the date of the adverse order made under Rule 99 of order 21, had expired some time before November 20,1948, on which date the appellant made his first application pointing out the defect in*

*the plaint, the adverse order under Order 21, Rule 99, having been made on April 12,1947. The application which the appellant made on November 20,1948, had not the merit of such beneficent purpose as is now sought to be made out by learned counsel for the appellant. When the application was made, the period of limitation had already expired, and the appellant very clearly said that no permission should be given to the plaintiff to make an amendment thereafter. We do not therefore think that the appellant can make much capital out of the application made on his behalf on November 20,1948.*

4. The Apex Court in the case of **NORTH EASTERN RAILWAY ADMINISTRATION vs. BHAGWAN DAS** reported in **(2008) 8SCC 511**, made an observation as follows:

*16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C (as it stood at the relevant time) are concerned, there are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Prigonda Hongonda Patil vs.Kalgonda Shidgonda Patil, which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working*

*injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.*

5. Relying on the said observation, the learned counsel for the petitioner made a submission that in the event of not allowing the amendment, the petitioner would be greatly prejudiced. Though there was a discussion regarding the settlement deed by the Trial Court, it is necessary for the petitioner to challenge the settlement deed as the same will affect the rights of the petitioner. Substantiating the said ground, the learned counsel submitted that the settlement deed dated 09.11.2000 is a conditional settlement and the condition imposed in the settlement has not been complied with by the parties. In view of the fact that the conditions stipulated are not honoured, the petitioner is forced to file the amendment petition, seeking the relief of declaration to declare that the settlement deed dated 09.11.2000 is null and void. In

the event of not amending the prayer, the rights of the petitioner cannot be established as the conditions stipulated in the settlement are violated by the parties. Therefore, the petition deserves to be allowed.

6. The learned counsel appearing on behalf of the respondents disputed the contention raised on behalf of the petitioner/appellant by stating that the amendment petition filed under Order 6 Rule 17 of the Code of Civil Procedure is not maintainable, in view of the fact that the amendment introduced in Act 22 of 2002, more specifically, the proviso clause enumerates that *"provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial."* Thereafter, the present amendment petition is filed, during the pendency of the appeal suit, and therefore, it cannot be entertained. In support of the said contention, the learned counsel appearing on behalf of the respondent relied on the judgment of this Court in the case of **M.G.KANNAN vs.V.PALANIAMMAL** reported in **2018(1) MADWN (Civil) 748,**

wherein the following observations are made:

9. Proviso to Order 6, Rule 17 CPC would clearly state that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. As per the above proviso, the petitioner cannot seek amendment during the appeal. There is no pleading as to the due diligence shown by the petitioner and despite of which he was not able to claim the relief of declaration. By including the prayer of declaration, the nature and character of the suit will change. Also, the petitioner has clearly stated in his written statement that the respondent sought for mandatory injunction without seeking the relief of declaration. But, inspite of that, the respondent has not amended the plaint and now after passing of the decree, the respondent/plaintiff is not entitled to seek for amendment at the appellate stage. Even as per the proviso to Order 6, Rule 17 CPC, as the respondent had knowledge about the written statement filed by the petitioner, learned counsel for the respondent cannot plead due diligence for filing amendment application and therefore, in my considered opinion, the impugned order passed by the learned judge warrants

*interference.*

7. This apart, the settlement deed dated 09.11.2000 is now sought to be included in the relief. The suit for partition was instituted during the year 2008. Therefore, now after a lapse of 20 years, the petitioner cannot seek for amending the prayer in the plaint so as to nullify the settlement deed, which was otherwise admitted by the parties, even in the plaint.

8. The learned counsel appearing on behalf of the respondent has drawn the attention of this Court with reference to the averments made in the plaint in paragraph No.9. The petitioner/appellant in the plaint has stated that *"the plaintiff has no intention of praying setting aside the whole transaction of settlement of the plaint schedule property as the same will result in detrimental to the sixth defendant who has complied the condition precedent for settlement."*

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9. This apart, the Trial Court has also considered the terms and conditions of the settlement deed. After complete adjudication of the settlement deed dated 09.11.2000, the suit was dismissed and when the appeal suit was filed, thereafter the present amendment petition is filed to amend the plaint so as to declare the settlement deed dated 09.11.2000 as null and void. It is further contended that the petitioner/appellant was fully aware of the settlement and he has waived his right, with reference to the conditions stipulated in the settlement. This being the factum, now he cannot file amendment petition so as to declare that the settlement deed dated 09.11.2000 is null and void. The petitioner/appellant has not explained the reasons for delay. No pleading is made available in the plaint filed in support of miscellaneous petition, to establish that he could not challenge the settlement deed, when the suit was pending. In the absence of due diligence shown by the petitioner/appellant, the present amendment petition cannot be entertained at all.

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10. Considering the arguments, this Court is of the considered opinion that the spirit of amended Order 6 Rule 17 is to considered at the first instance. Thus, the petitioner has to establish that *"inspite of due diligence, the party could not have raised the matter before the commencement of trial"*. This being the pre-condition for entertaining the amendment petition, this Court is of the considered opinion that in the plaint itself, there is a categorical averment regarding the settlement deed dated 09.11.2000. This apart, in paragraph No.9, the plaintiff has clearly stated that *"the plaintiff has no intention of praying setting aside the whole transaction of settlement of the plaint schedule property as the same will result in detrimental to the sixth defendant who has complied the condition precedent for settlement"*. The petitioner/appellant was aware of the settlement deed dated 09.11.2000. Consequently, he has waived his right, with reference to the terms and conditions stipulated in the said settlement deed. When there is a specific averment in the plaint regarding his opinion and determination in respect of the settlement deed, then there is no reason to arrive at a conclusion that the petitioner, inspite of due diligence, he could not raise

the matter before the commencement of trial in the original suit.

11. This apart, the settlement deed was executed, admittedly, on 09.11.2000. The original suit was instituted in the year 2008. The petitioner/appellant allowed the trial to go on and the Trial Court also dismissed the suit. After the dismissal of the suit by the Trial Court, the petitioner filed an appeal suit in A.S.No.500 of 2017, in the year 2017. Thereafter, the miscellaneous petition to amend the plaint was filed along with the appeal suit. Under these circumstances, this Court is of the considered opinion that in the event of allowing the amendment petition, at this stage, undoubtedly, it would change the very nature of the partition suit instituted before the Trial Court as the petitioner/appellant himself deposed before the Trial Court about the settlement deed and made a categorical statement in the plaint itself.

12. In view of proviso clause in amended Order 6 Rule 17 of C.P.C, it is not made available to the Courts to allow all the amendments in a routine manner. Now, the scope of amendment of plaint is restricted.

Only if the conditions stipulated in the proviso clause are established, the Courts can consider for amending the plaint and not otherwise. Thus, the amendment of plaint cannot be a routine affair and the conditions stipulated in Order 6 Rule 17 of C.P.C., is to be strictly complied with and the exceptions stated in the proviso clause are to be looked into, with reference to the facts and circumstances and only thereafter, the Court can allow the petition seeking for amendment of plaint.

13. As far as the *lis* on hand is concerned, the fact remains that the petitioner/appellant was very much aware of the settlement deed dated 09.11.2000. He has admitted in the plaint itself by stating that "*the plaintiff has no intention of praying setting aside the whole transaction of settlement of the plaint schedule property as the same will result in detrimental to the sixth defendant who has complied the condition precedent for settlement*". This being the specific averments, the Trial Court has rightly proceeded with and the suit was dismissed.

14. The learned counsel for the petitioner/appellant opposed the

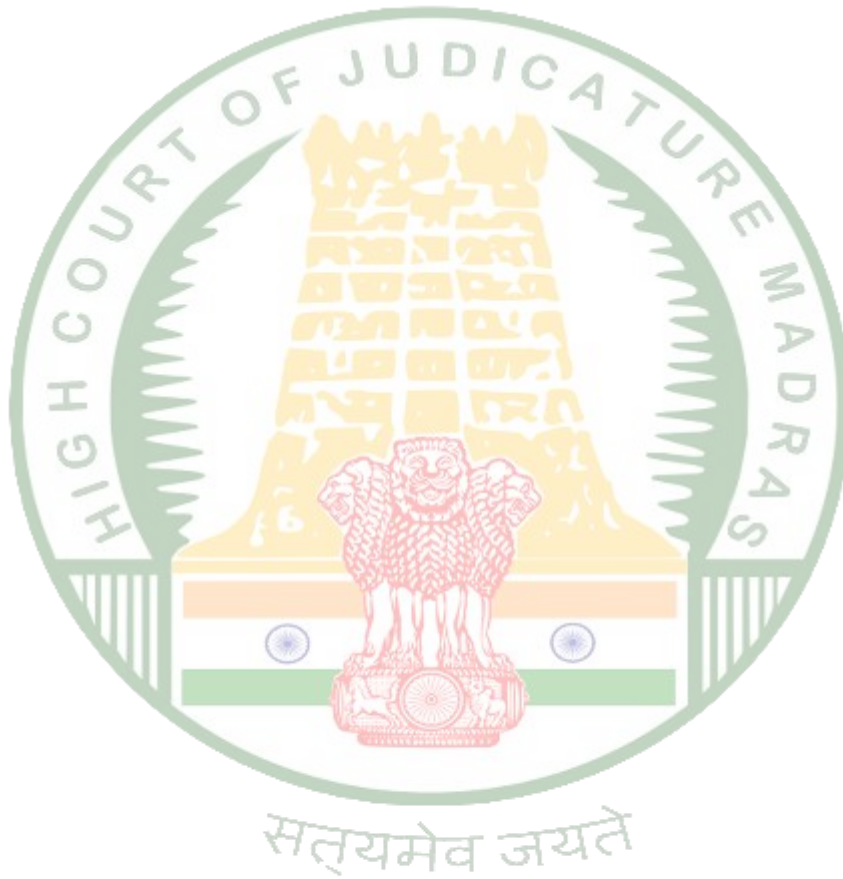
contention of the respondent by stating that the statement in paragraph No.9 in the plaint cannot be taken as an admission, since the reading of the entire plaint revealed that it is not an admission.

15. This Court is of the considered opinion that, apart from the statement made in paragraph No.9, the facts, as a whole, revealed that the petitioner/appellant was very much aware of the settlement deed and there was a complete adjudication by the Trial Court with reference to the settlement deed dated 09.11.2000, and the suit was dismissed. Thereafter, the appeal suit was filed. Further, the settlement deed of the year 2000, remained unchallenged for more than eight years, even at the first instance in the original suit, it was not challenged . Now after a lapse of 17 years, this Court cannot entertain such relief as the issues were concluded and the settlement deed was expressly accepted by the petitioner and the adjudication was made by the Trial Court in the original suit. This being the factum, this Court do not find any acceptable ground for the purpose of considering the miscellaneous petition. Consequently, the civil miscellaneous petition is devoid of merits and

stands dismissed.

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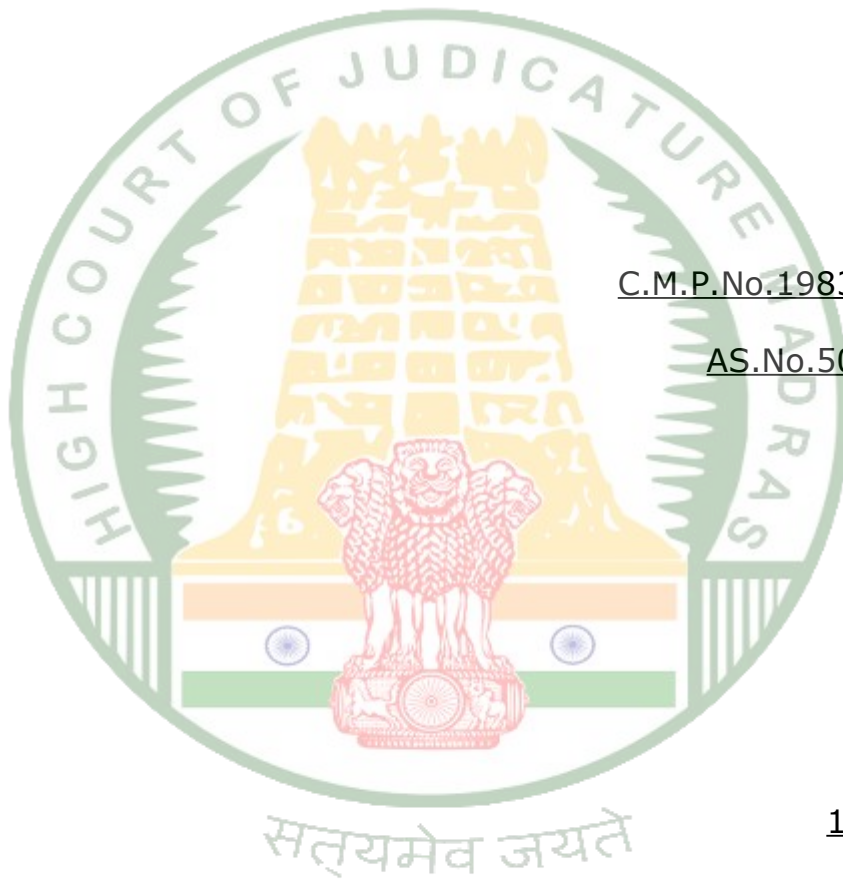
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**S.M.SUBRAMANIAM, J.**

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