



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. (PD) .No.2918 of 2016
and
C.M.P.No.14887 of 2016

Rani .. Petitioner/Petitioner/Plaintiff
Vs.
Jayamani .. Respondent/Respondent/Defendant

PRAYER : Civil Revision Case filed under Article 227 of Constitution of India, praying to set aside the order dated 14.06.2016 passed in I.A.No.849 of 2015 in O.S.No.87 of 2011 on the file of the Subordinate Judge, Attur.

For Petitioner : Mr.P.Jagadeesan

For Respondent : Mr.L.Mouli

J U D G M E N T

The petitioner is the plaintiff in O.S.No.87 of 2011 on the file of the learned Subordinate Judge, Attur, has preferred I.A.No.849 of 2015 under Order VI Rule 17 and Section 151 of C.P.C. praying the Court to permit him to carry out the amendments in the plaint in O.S.No.87 of 2011) as described in the petition. The defendant / respondent raised an objection. On hearing both sides, the learned trial Judge concluded that there was no change in nature and character of the suit, but the petition was filed with delay, so the amendment application was dismissed. Aggrieved by the said order, he has preferred this Revision.

2. At the time of arguments, the learned counsel for the petitioner submitted that, the earlier counsel for the petitioner has not filed the plaint with entire facts in detail, and so the subsequent counsel filed the said application for amendment with the details of the facts without changing the prayer and cause of auction. But the learned trial Judge, though accepted this fact, but dismissed the petition merely on the



ground of delay. He further submitted that, before starting trial, the petitioner is entitled to carry out any amendment, but without considering this legal aspect, the learned trial Judge has erroneously dismissed the application on the ground of delay. Hence, he prays to set aside the order passed by the learned Subordinate Judge, Attur in I.A.No.849 of 2015. In support of his submission, the learned counsel relied on the proposition laid in the case of this Court in Sellammal (now Deceased) and others Vs. M.Natesan reported in (2004)1 M.I.J.100" as follows:

" Pre-trial amendments are allowed more liberally as it can be generally assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the amendment?"

3. By way of rival submission, the learned counsel for the respondent submitted that by introducing the amendment, he denied the factum of marriage with one Mani, which was admitted in the original plaint and was withdrawn by way of this amendment. Besides, he also contended that nearly 1.5 years after filing of the plaint, the alleged amendment was filed, by indulging various facts which are not permissible under law. Hence, he prayed to dismiss this petition.

4. On a perusal of the entire records, it reveals that, originally the petitioner filed a suit to re-convey the suit property by declaring the sale deed dated 08.09.2009 standing in the name of respondent / defendant as null and void. As per the contention of the petitioner, the said sale deed executed by her in the name of the respondent / defendant, is a sham and nominal document, which was created for the purpose of her brother's marriage with the defendant with an undertaking that the said property should be re-conveyed to her after the birth of the child to her brother. Since the defendant refused to comply with the re-conveyance, she filed the said suit. Subsequently after 1.5 years, she filed the application for amendment by narrating various facts which are all necessary to establish the execution of sham and nominal document in favour of the defendant. By way of this amendment, the petitioner wanted to explain the facts in detail which are necessary to adjudicate the issue involved in the suit as well as to prove the circumstances which necessitated her to execute the alleged sham and nominal document in favour of the defendant, that apart it is admitted fact that the said application was filed before the suit ripe for trial. The trial Court, though accepted the amendment, but dismissed the application for the reason that it was filed with the delay of 1.5 years.



5. As discussed above, the parties are entitled to file amendment petition before trial, in order to avoid multiplicity of proceedings and adjudicate the claim of the parties with all fairness. Further, the proposed amendment neither changes the character of the suit, nor the relief. Therefore, it is permissible under law. In this regard it is useful to refer Order VI Rule 17 CPC which reads as follows:

ORDER VI :

.....Rule 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."

6. So the petitioner is entitled under Order VI Rule 17 to carry out the amendment as she prayed. Hence the order passed by the learned trial Judge in I.A.No.849 of 2015, dated 14.06.2016 is set aside. Accordingly, this Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
Attur.

+1cc to Mr.L.Mouli, Advocate, S.R.No.51673

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.51806

C.R.P.(PD) No.2918 of 2016
and

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BS(CO)
SU(10/11/2021)